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ALCOHOL, TOBACCO AND FIREARMS

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Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

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NOTICE

In the December Monthly Bulletin for 1978, ATF announced that the Bulletin would become a quarterly, rather than a monthly publication. Additionally, the Annual Cumulative Bulletin is now being discontinued. So that the Bulletin will continue to serve as a useful research tool, the last quarterly issue will include a complete cumulative index for the year.

Subscribers will now receive all issuances with a complete index, without the added expense of the Cumulative Bulletin itself.

NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Alcohol, Tobacco and Firearms Bulletin as the source would be appropriate.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWARD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—Alcohol

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-63

27 CFR Parts 170, 231 and 240

Elimination and Simplification of Certain Public Use Forms Prepared by the Wine Industry

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final rule (Treasury decision).

SUMMARY: This rule eliminates seven winery forms, simplifies the monthly bonded winery report, changes the currently required semiannual wine inventories and reporting of losses to an annual requirement and simplifies affected regulation sections. This rule will ease a reporting burden and lighten the paperwork required for wine industry members.

EFFECTIVE DATE: February 1, 1980.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Bureau of Alcohol, Tobacco and Firearms found that a number of wine industry forms required by regulations (1) duplicate recordkeeping and reporting requirements, (2) are prepared in a format not compatible with a proprietor's operations or commercial records systems, and (3) are no longer necessary since the required information is available to ATF through other source records. Also, the wine report, ATF F 5120.17, submitted monthly by industry members was found difficult to prepare and requested information no longer necessary in some cases.

On April 16, 1979, a notice of proposed rulemaking was published in the Federal Register (44 FR 22473), which proposed to amend 27 CFR Parts 231 and 240, by eliminating seven winery forms and simplifying the monthly bonded winery report. The information required by the eliminated forms was to be replaced by commercial records of the proprietor's operations. The notice also proposed a reduction in the required wine inventories from semi-annual to annual.

Interested persons were given until June 15, 1979, to submit relevant data, views, or arguments regarding the proposals.

DISCUSSION OF COMMENTS

Several written comments were received in response to the proposed regulations. In addition to the briefs submitted by individual industry members, the Wine Institute, a trade association whose members produce approximately 75 percent of all wine produced in California, submitted a comment letter. The comments received are discussed below according to the subject areas they addressed.

ELIMINATION OF REQUIRED FORMS

Most of the commenters favored the elimination of all seven of the forms as proposed. Two commenters favored keeping the Form 2056, Record of Still Wine, and one of these commenters favored retaining the Form 2621, Record of Bottled Wine, combined into the Form 2056. One commenter favored retaining the Form 2059, Record of Distilling Materials or Vinegar Stock.

Many constructive suggestions were made on the proposed regulations which specify the record information to be maintained. If the suggestion improved the understanding of the regulation or eliminated duplicate recordkeeping, the suggestion was incorporated into this final rule. The following forms are therefore eliminated by this final rule: Form 2056, Record of Still Wine; Form 2621, Record of Bottled Wine; Form 2057, Record of Effervescent Wine; Form 2058, Special Natural Wine Production Record; Form 2059, Record of Distilling Materials or Vinegar Stock; Form 2060, Record of Cases Filled; and Form 702-C, Inventory of Wine.

REVISED REPORT

The revision proposed for simplifying the monthly report of winery operations, ATF F 5120.17, received many favorable comments. However, many commenters objected to changing the Form 702 to the ATF Subject Classification No. 5120.17. Therefore, we have added a "(702)" to the new form number because it is well known to ATF regulatory personnel and those in the wine industry involved with Government regulations.

CHANGE OF SEMI-ANNUAL TO ANNUAL INVENTORY

Only one commenter opposed changing the required semi-annual wine inventory to an annual requirement. The objection was based on a possible difficulty in resolving problems discovered during an audit. While we agree inventory differences might be difficult to resolve at wineries taking only an annual inventory, we believe most proprietors' inventory controls, including full or partial periodic counts, are adequate.

OTHER COMMENTS

A number of suggestions were offered by commenters which were not the subject of the notice of proposed rulemaking. These suggestions have been added to the comments received on an advance notice of proposed rulemaking for revising all wine regulations. Some of the suggestions requested the use of metric system on tax returns and reports, allowing monthly or quarterly tax returns for wineries paying under a given tax amount, and the dropping of fractional parts of a gallon for reports.

AUTHORITY AND ISSUANCE

The regulations are issued under 68A Stat 917; 26 U.S.C. 7805. Accordingly, 27 CFR is amended as follows:

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

§ 170.687 [Amended]

1. Section 170.687 is amended to change Form 702 to Form 5120.17 (702) whenever found in the section.

2. Section 170.690(b) is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As amended, § 170.690 (*b*) reads as *follows:*

§ 170.690 Bonded wine cellar records.

* * * * *

(b) *Summaries and reports.* The quantity of wine, or wine products made from wine, used to produce nonbeverage wine shall be recorded daily in records prescribed by 27 CFR 240.908. At the close of each month, the quantities shall be totaled and the total recorded as a credit on Form 5120.17(702). The quantities of nonbeverage wine produced and withdrawn each month shall be summarized each month by tax class and reported on Form 5120.17(702) for that month.

3. Section 170.691 is revised to reflect the elimination of Form 702-C and the change of Form 702 to Form 5120.17(702). Also, the required inventory is changed from semi-annual to annual and no inventory report is submitted to the regional regulatory administrator. As amended, § 170.691 reads as follows:

§ 170.691 Inventories.

Each proprietor producing nonbeverage wines shall take a physical inventory of all nonbeverage wines in bond at the same time as the inventory required under 27 CFR 240.903. The nonbeverage wine inventory record shall show the total quantity of wine in each tax class by formula number. The inventory record shall be retained as required under 27 CFR 240.903.

PART 231—TAXPAID WINE BOTTLING HOUSES

1. Section 231.111 is revised to reflect the elimination of Form 2060. As amended, § 231.111 reads as follows:

§ 231.111 Record of cases filled.

Each proprietor of a taxpaid wine bottling house shall maintain a daily record, by tax class, of wine cases filled. The record shall contain the following information:

(a) The bottling tank number;

(b) The kind of wine bottled;

(c) The date the cases were filled;

(d) The size of the bottles and the number of cases filled;

(e) The serial numbers of the cases filled; and

(f) The total quantity bottled in liters or wine gallons.

(72 Stat. 1381; 26 U.S.C. 5367)

2. Section 231.113 is revised to change the required semi-annual inventory to an annual inventory. As amended, § 231.113 reads as follows:

§ 231.113 Inventories.

Each proprietor of a taxpaid wine bottling house shall take an inventory of all wine on their premises on June 30 of each year or where a different period has been established, the inventory shall be taken at the end of that period. (Proprietors who want to establish a different annual inventory period from the period beginning on July 1 and ending on June 30 shall submit a notice, in duplicate, to the regional regulatory administrator. The notice shall set the date the inventory year will begin and end.) The proprietor's inventory record shall include:

(a) The serial numbers, if any, of all containers (except filled cases);

(b) Description of wine;

(1) State the generic name (i.e., port, claret) or designate as white or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage, varietal and/or geographical claim shall be appropriately identified (i.e., 1977 Napa Valley Pinot Noir).

(c) Inventory summary;

(1) Bulk and bottled wines shall be totaled in liters or wine gallons separately by tax class; and

(2) All wines shall be summarized by kind.

(d) Inventory record;

(1) All inventory pages shall be numbered consecutively;

(2) The last inventory page shall be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wines required to be inventoried;" and

(3) The proprietor shall retain the record of inventory and the working papers available for inspection by ATF officers at any reasonable hour. (72 Stat. 1381; 26 U.S.C. 5369)

PART 240—WINE

1. Table of Contents Subpart UU—Records and Reports is amended to reflect the change of a form number and the elimination of six forms. As amended, the Table of Contents Subpart UU reads as follows:

Subpart UU—Records and Reports
Sec.
240.900 Form 5120.17(702).
240.901 Form 2050.
240.902 Form 2052.
240.903 Inventories.

* * * * *

240.905 Prescribed forms.

* * * * *

240.908 Record of bulk still wines.
240.909 Record of effervescent wine.
240.910 Record of special natural wine and other wine production.
240.911 Record of distilling material or vinegar stock.
240.912 Record of bottled wine.
240.913 (Deleted).
240.914 Sugar record.

* * * * *

§ 240.320 [Amended]

2. Section 240.320 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.321 [Amended]

3. Section 240.321 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.362 [Amended]

4. Section 240.362 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.367 [Amended]

5. Section 240.367 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.383 [Amended]

6. Section 240.383 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.402 [Amended]

7. Section 240.402 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.408 [Amended]

8. Section 240.408 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.443 [Amended]

9. Section 240.443 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.486 [Amended]

10. Section 240.486 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.487 [Amended]

11. Section 240.487 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.491 [Amended]

12. Section 240.491 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.620 [Amended]

13. Section 240.620 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.633 [Amended]

14. Section 240.633 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.662 [Amended]

15. Section 240.662 is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As revised, § 240.662 reads as follows:

§ 240.662 Records.

Soured wine removed as vinegar shall be recorded and reported on the proprietor's record of bulk still wine and on Form 5120.17(702).

(72 Stat. 1381; 26 U.S.C. 5367)

§ 240.672 [Amended]

16. Section 240.672 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.722 [Amended]

17. Section 240.722 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.726 [Amended]

18. Section 240.726 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.730 [Amended]

19. Section 240.730 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.732 [Amended]

20. Section 240.732 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.753 [Amended]

21. Section 240.753 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.763 [Amended]

22. Section 240.763 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.773 [Amended]

23. Section 240.773 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

24. Section 240.783 is revised to reflect the change Form 702 to Form 5120.17(702) and a change in inventory requirements. As revised, § 240.783 reads as follows:

§ 240.783 Losses during a year.

Any losses on bonded wine cellar premises during the year shall be entered on monthly report Form 5120.17 (702) when determined. The proprietor shall take an actual inventory of all untaxpaid wine on-hand in the bonded wine cellar as of the close of business June 30 of each year or where a period different from July 1 to June 30 has been established, the inventory shall be taken at the end of that period. The inventory shall be recorded as required by § 240.903, and losses disclosed by an inventory shall be reported on Form 5120.17(702) for the appropriate month. No claim for allowance of loss is required for losses in production or storage provided (a) there are no circumstances indicating that all or a part of the wine reported lost was unlawfully removed, and (b) the loss did not exceed 3 percent of the aggregate quantity of wine on-hand at the beginning of the year and received in bond during the year, 6 percent of the still wine produced by fermentation, 6 percent of the sparkling wine produced by fermentation in bottles, 3 percent of the special natural wine produced under § 240.444 or wine produced under § 240.488, 3 percent of the artificially carbonated wine produced, and 3 percent of the bulk process sparkling wine produced, at the bonded wine cellar during the annual period.

(72 Stat. 1381; 26 U.S.C. 5367)

§ 240.785 [Amended]

25. Section 240.785 is revised to

change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.786 [Amended]

26. Section 240.786 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.787 [Amended]

27. Section 240.787 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.802 [Amended]

28. Section 240.802 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.808 [Amended]

29. Section 240.808 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.836 [Amended]

30. Section 240.836 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

§ 240.837 [Amended]

31. Section 240.837 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

32. Section 240.900 is revised to reflect the change of Form 702 to Form 5120.17(702). As revised, § 240.900 reads as follows:

§ 240.900 Form 5120.17.

The proprietor of each bonded wine cellar shall submit Form 5120.17(702), Monthly Report of Wine Cellar Operations, to the regional regulatory administrator as per instructions on the form. Bonded wine cellar operations shall be summarized and reported on Form 5120.17(702) as indicated by the headings of lines and columns, and in accordance with the instructions printed on the form. The information reported on Form 5120.17(702) shall be obtained from the wine cellar records maintained in accordance with the requirements of this part. Where fractional parts of a gallon are involved, they shall be expressed in decimals to the nearest one-tenth gallon, five hundredths gallon being converted to the next full one-tenth gallon.

(72 Stat. 1381; 26 U.S.C. 5367)

33. Section 240.903 is revised to reflect the elimination of Form 702-C and the change of Form 702 to Form 5120.17(702). Also, the required inventory is changed from semi-annual to annual and no inventory report is submitted to the regional regulatory administrator. As revised, § 240.903 reads as follows:

§ 240.903 Inventory.

Each proprietor of a bonded wine cellar shall prepare a record of the inventory taken of all wine in storage at the close of business on June 30 of each year or where a different period has been established, the inventory shall be taken at the end of that period. (Proprietors who want to establish a different annual inventory period from the period beginning on July 1 and ending on June 30 shall submit a notice, in duplicate, to the regional regulatory administrator.) The inventory record shall be retained on file with the proprietor's Form 5120.17 (702) for the month the inventory was taken. If at other times complete inventories of wine are taken and losses disclosed are reported on the monthly report, Form 5120.17(702) an inventory record shall be prepared and remain on file with the proprietor's Form 5120.17(702) for that month. The proprietor's inventory record shall include:

(a) Serial number of containers;

(1) Where barrels or puncheons are involved, list as "barrels" or "puncheons"; and

(2) Total volume of one kind of wine in bottles or cases may be entered as one item appropriately identified.

(b) Description of wine;

(1) State the generic name (i.e., port, claret) or designate as a white or red table or dessert wine; or

(2) Wine intended to be marketed with a vintage, varietal and/or geographical claim shall be appropriately identified (i.e., 1977 Napa Valley Pinot Noir); or

(3) If the wine is other than grape wine, state the type (i.e., orange, honey).

(c) Inventory summary—Bulk and bottled wines shall be totaled separately in wine gallons or in liters, by tax class, and reported on Form 5120.17(702);

(d) Inventory record;

(1) All inventory pages shall be numbered consecutively; and

(2) The last inventory page shall be dated and signed after the statement, "Under penalties of perjury, I declare that I have examined this inventory record and to the best of my knowledge and belief, it is a true, correct and complete record of all wines required to be inventoried."

(72 Stat. 1381; 26 U.S.C. 5367, 5369)

34. Section 240.905 is revised to reflect the elimination of all prescribed cellar record forms (Forms 2056, 2057, 2058, 2059 and 2621). As revised, § 240.905 reads as follows:

§ 240.905 Prescribed forms.

All reports required by this part shall be submitted on forms prescribed by the Director. Entries shall be made as indicated by the headings of the columns and lines and as required by the instructions on the form. Form reports filed with the regional regulatory administrator are furnished free of cost.

(72 Stat. 1381; 26 U.S.C. 5367)

35. Section 240.906 is revised to reflect the change of Form 702 to Form 5120.17(702) and to reflect the elimination of Forms 702-C, 2056, 2057, 2058, 2059 and 2621. As revised, § 240.906 reads as follows:

§ 240.906 Records and reports under the metric system.

Each proprietor of a bonded wine cellar shall maintain records in wine gallons or in liters. Required reports, tax returns, and transaction records submitted to the regional regulatory administrator shall have quantities reported in wine gallons.

(72 Stat. 1381; 26 U.S.C. 5367)

36. Section 240.908 is revised to reflect the elimination of Form 2056 and the change of Form 702 to Form 5120.17(702). As revised, § 240.908 reads as follows:

§ 240.908 Record of bulk still wine.

Each proprietor of a bonded wine cellar who produces or receives still wine, other than distilling material or vinegar stock made with excess water, shall maintain a daily record of transactions for bulk still wine. A separate record (verifiable by source records) shall be maintained for each tax class of still wine. The record shall contain the following:

(a) The quantity produced, received, shipped taxpaid, removed (i.e., in bond, export, family use, samples), and used in effervescent wine production;

(b) The specific type of production method used (i.e., natural fermentation, sweetening, addition of wine spirits, amelioration, blending);

(c) The quantity of wine produced by fermentation determined by actual measurement;

(d) The quantity used and produced by sweetening, amelioration or addition of wine spirits established by measurements taken before and after production. In addition, the record shall contain the kind and quantity of any materials added to these wines;

(e) The quantity of wine used and produced by blending (record only if wine of different tax classes are blended together);

(f) The quantity of standard wine or wine lees removed to fermenters for refermentation or removed directly to the production facilities of a distilled spirits plant or vinegar plant; and

(g) An explanation of any unusual transaction.

At the end of each month the totals of the daily records shall be reported on Form 5120.17(702).

(72 Stat. 1381; 26 U.S.C. 5367)

37. Section 240.909 is revised to reflect the elimination of Form 2057 and the change of Form 702 to Form 5120.17(702). As revised, § 240.909 reads as follows:

§ 240.909 Record of effervescent wine.

Each proprietor of a bonded wine cellar producing or receiving effervescent wine shall maintain a daily record showing the details of production, receipt, storage, removal and loss. A separate record (verifiable by source records) shall be maintained for each specific process used (bulk or bottle fermented or artificially carbonated) and by the specific kind of wine (i.e., grape, pear, cherry). The record shall contain the following:

(a) Quantity of still wine put into bottles or pressure tanks prior to secondary fermentation;

(b) Quantity of first dosage used;

(c) In process bottling losses (i.e., refilling, spillage, breakage);

(d) Transfer and receipts of effervescent wines in process;

(e) Quantity of effervescent wines in process returned to still wine;

(f) Quantity of finishing dosage used;

(g) Quantity of wine contained in bottles of finished effervescent wine (amount produced);

(h) Quantity of each item used in the production of dosages (i.e., wine, syrup, wine spirits); and

(i) An explanation of any unusual transaction. At the end of each month all daily entries shall be totaled and entered on Form 5120.17(702).

(72 Stat. 1381; 26 U.S.C. 5367)

38. Section 240.910 is revised to reflect the elimination of Form 2058 and the change of Form 702 to Form 5120.17(702). As revised, § 240.910 reads as follows:

§ 240.910 Record of special natural wine and other wine production.

Each proprietor of a bonded wine cellar producing special natural wine or wine under § 240.488 shall maintain a daily record showing the details of production. The record shall contain the following:

(a) A number for each lot of wine produced;

(b) The approved formula number for each lot of wine;

(c) The quantity of wine used in the production of special natural wine, wine under § 240.488 and essences;

(d) The quantity of essences produced or purchased by the proprietor (whether made with wine spirits or other alcohol) and the use, transfer or other disposition of those essences;

(e) The date each lot of wine is finished;

(f) The gain or loss resulting from the production of each lot of wine as determined by comparing the quantity finished with the quantity used (report the total monthly loss or gain in Part I Section A of Form 5120.17(702));

(g) An explanation of any unusual loss or gain (report in Part X of Form 5120.17(702));

(h) A record of the production of essences showing date of production, formula number, quantities of wine spirits and herbs used and the amounts produced; and

(i) A separate record shall be maintained of the receipt and use or other disposition of all herbs, aromatics, or other flavoring materials to be used in the production of special natural wine or wine under § 240.488.

Proprietors producing special natural wine or wine under § 240.488 shall maintain a separate record of herbs and similar products, and in addition, keep the same records as are required in the production of natural wine.

(72 Stat. 1381; 26 U.S.C. 5367)

39. Section 240.911 is revised to reflect the elimination of Form 2059 and the change of Form 702 to Form 5120.17(702). As revised § 240.911 reads as follows:

§ 240.911 Record of distilling material or vinegar stock.

Each proprietor of a bonded wine cellar producing or receiving wine with excess water expressly for use as distilling material or vinegar stock shall maintain a daily record showing the amount and kind produced, received (and from whom), and removed (and to whom). The proprietor shall keep a separate record by each type of material used from which the distilling material or vinegar stock was fermented (i.e., grape, berry). All distilling material or vinegar stock produced, including wine lees refermented for use as distilling material, shall be recorded upon removal from fermenting tanks. At the end of each month the proprietor shall record the total of daily transactions in Part VI of Form 5120.17(702). This section shall not apply to standard wine or unwatered wine lees recorded on the proprietor's record of bulk still wine and removed for use as distilling material or vinegar stock.

(72 Stat. 1381; 26 U.S.C. 5367)

40. Section 240.912 is revised to reflect the elimination of Form 2621 and the change of Form 702 to Form 5120.17(702). As revised, § 240.912 reads as follows:

§ 240.912 Record of bottled wine.

Each proprietor of a bonded wine cellar who bottles wine or receives bottled wine in bond shall keep a daily record of bottled wine, by tax class, showing the quantity of wine bottled, the quantity of bottled wine received in bond, the quantity of taxpaid bottled wine returned to bond, and the quantity of bottled wine removed (i.e., taxpaid removals, transfers in bond, dumped to bulk or destroyed, breakage, used for tasting). At the end of each month the proprietor shall record the total of daily transactions in Part I Section B of Form 5120.17 (702) and shall explain any unusual transactions in Part X of the form. The quantity bottled shall be based on the number and size of bottles filled. The quantity recorded as bottled for bottle fermented sparkling wine shall be determined after the disgorging and refilling process.

(72 Stat. 1381; 26 U.S.C. 5367)

§ 240.913 [Deleted]

41. Section 240.913 is deleted due to the elimination of all prescribed cellar record forms (Forms 2056, 2057, 2058, 2059 and 2621).

§ 240.915 [Amended]

42. Section 240.915 is revised to change Form 702 to Form 5120.17 (702) whenever found in the section.

43. Section 240.916 is revised for purposes of clarification. As revised, § 240.916 reads as follows:

§ 240.916 Varietal and vintage wine records.

A proprietor of a bonded wine cellar removing wine under a varietal, vintage, appellation of origin, or any other designation shall maintain complete records so that any designation claimed may be verified by audit.

(72 Stat. 1381; 26 U.S.C. 5367)

44. Section 240.923 is revised to reflect the elimination of Form 702-C

and the change of Form 702 to Form 5120.17(702). As revised, § 240.923 reads as follows:

§ 240.923 Filing of forms.

Each proprietor of a bonded wine cellar shall file records and retained copies of reports in chronological order and in bound or other secure form. An inventory record shall be filed with the Form 5120.17(702) for the month the inventory was taken.

(72 Stat. 1381; 26 U.S.C. 5367)

Signed: November 2, 1979.

G. R. DICKERSON,
Director.

Approved: January 7, 1980.

RICHARD J. DAVIS,
Assistant Secretary
(Enforcement and
Operations).

(Filed by the Office of the Federal Register on January 23, 1980, 8:45 a.m., and published in the Federal Register for January 24, 1980, 45 F.R. 5694)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

T.D. ATF-64

27 CFR Parts 19 and 250

Distilled Spirits Plants—Transition to the All-in-Bond System

AGENCY: Bureau of Alcohol, Tobacco, and Firearms (ATF).

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). This temporary rule provides additional deferral of the distilled spirits tax on wine contained in distilled spirits products.

EFFECTIVE DATE: The effective date of the temporary regulation is February 1, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Under the provisions of 26 U.S.C. Chapter 51 and the regulations issued thereunder, proprietors of distilled spirits plants may withdraw distilled spirits from ATF bond on determination, but before payments of tax. Deferral of payment is contingent on the filing of a withdrawal or unit bond of sufficient penal sum.

Regulations in 27 CFR Part 19 provide that, during calendar year 1980, deferred payment of distilled spirits tax for each semimonthly return period shall be due by the last day of the next succeeding return period plus five days. For return periods in calendar year 1980, the first three tax payments are due February 5, February 20, and March 5, 1980.

Similar deferral periods apply to taxpayers in Puerto Rico, for spirits brought into the United States on determination, but before payment of tax. Eligibility for deferred payment is contingent on filing of a tax deferral bond. Payment due dates for the first three tax returns applicable to 1980 are the same as for domestic distilled spirits plants.

Prior to the passage of the Distilled

Spirits Tax Revision Act of 1979, taxpaid wine contained in distilled spirits products was not subject to the distilled spirits tax. The taxpaid wine used by distilled spirits plants was subject to a wine tax, usually $0.17 per wine gallon.

Presently, the law provides that the entire alcoholic content of distilled spirits products is taxable at the distilled spirits rate of $10.50 per proof gallon. In the case of wine contained in distilled spirits products, this can increase the tax attributable to the wine by as much as $9.89 per proof gallon.

Pending legislation (S. 1913, 96th Cong., 1st Sess. (1979)) would amend 26 U.S.C. Chapter 51 to restore the former tax status of wine contained in distilled spirits products. While the Treasury Department and the Bureau oppose enactment of such a measure, it appears very likely that S. 1913 or similar legislation will be enacted in the immediate future. In view of the apparent passage of legislation to restore the taxation of wine contained in distilled spirits products to its pre-1980 status, this temporary rule effectively postpones transition to the new method of taxation for an interim period extending from January 1, 1980, through, and not to exceed, March 20, 1980.

NEW PROVISIONS

This temporary rule revises the regulations in 27 CFR Parts 19 and 250 by providing for the additional deferral of part of the distilled spirits tax attributable to the wine component of distilled spirits products. The amount to be additionally deferred shall be reduced by the wine tax which would be applicable to the wine before addition to such products. The additional deferral applies to the first three semimonthly return periods applicable to spirits withdrawn during calendar year 1980. The tax so deferred shall be due and payable with the fourth semimonthly tax return, March 20, 1980. No further extension will be provided.

DRAFTING INFORMATION

The authors of this document are personnel of the Bureau of Alcohol, Tobacco and Firearms, assigned to the Regulations and Procedures Division (Regulatory Enforcement). Other personnel of the Bureau and the Treasury Department participated in the preparation of this document, both in matters of substance and style.

WAIVER OF PROCEDURE REQUIREMENTS OF TREASURY DIRECTIVES

Expeditious adoption of the provisions contained in this document is necessary in order to provide immediate rules for use by the distilled spirits industry in the filing of returns and payment of tax under the Distilled Spirits Tax Revision Act of 1979. Since the deferral is limited to the first three return periods of 1980, it is necessary that the regulations be immediately implemented to achieve the desired transitional relief. The provisions of paragraph 10 of the Treasury Department directive implementing Executive Order 12044 must be waived.

EFFECTIVE DATE

Issuance of this Treasury decision with notice and public procedure under 5 U.S.C. 553(b)(3) or subject to the effective date limitations in 5 U.S.C. 553(d)(3) is impracticable because any delay in implementing these temporary rules, which will provide relief to distilled spirits plants proprietors, would nullify such relief.

Accordingly, this Treasury decision becomes effective on February 1, 1980.

AUTHORITY AND ISSUANCE

These regulations are issued under

the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The table of sections for Part 19 is amended to reflect the addition of § 19.927 immediately following § 19.926. As amended, the table of sections for Part 19 reads as follows:

* * * * *

Sec.
19.927 Additional deferral of tax for products containing wine.

Paragraph 2. Section 19.927 is added immediately after § 19.926. As added, § 19.927 reads as follows:

§ 19.927 Additional deferral of tax for products containing wine.

(a) *General.* Each proprietor qualified to defer payment of distilled spirits tax as provided in § 19.243 or § 19.244 may additionally defer a portion of such tax as provided in this section. That porton of the distilled spirits tax attributable to the wine component of a distilled spirits product containing wine may be additionally deferred, if the product was tax determined during the first, second or their semimonthly return period in 1980. The amount of tax to be additionally deferred shall be determined by: (1) establishing the amount of tax which is due under 26 U.S.C. 5001 on the wine contained in a distilled spirits product; and, (2) deducting from the figure the amount of tax under 26 U.S.C. 5041 which was applicable to the wine before its addition to a distilled spirits product.

(b) *Reporting of additional deferral.* The tax so deferred will be reported on the semimonthly tax return (Form 5110.35) covering the period during which the distilled spirits products containing wine were tax determined. The additional deferral shall be noted on Form 5110.35 by citing this section of regulations and showing the amount of tax on Schedule C as an adjustment decreasing the amount due.

(c) *Remittance of additionally deferred tax.* All distilled spirits tax deferred in accordance with this section shall be paid with the fourth semimonthly tax return (Form 5110.35), which shall be filed by March 20, 1980, as provided in § 19.522. The additionally deferred tax shall be noted in Form 5110.35 by citing this section and showing the amount of tax on Schedule A as an adjustment increasing the tax due.

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Paragraph 3. The table of sections for Part 250 is amended to reflect the addition of § 250.112a. As amended, the table of sections for Part 250 reads as follows:

* * * * *

Sec.
§ 250.112a Additional deferral of tax for products containing wine.

* * * * *

Paragraph 4. Section 250.112a is added immediately after § 250.112. As added, § 250.112a reads as follows:

§ 250.112a Additional deferral of tax for products containing wine.

(a) *General.* Notwithstanding the requirement of § 250.112(f)(1), each person qualified to defer payment of distilled spirits tax as provided in § 250.66 may additionally defer a portion of such tax as provided in this section. That portion of the distilled spirits tax attributable to the wine component of a distilled spirits product containing wine may be additionally deferred, if the product was tax determined during the first, second, or third semimonthly return period in 1980. The amount of tax to be additionally deferred shall be determined by: (1) establishing the amount of tax which is due under 26 U.S.C. 5001 on the wine contained in the distilled spirits product; and, (2) deducting from that figure the amount of tax under 26 U.S.C. 5041 which was applicable to the wine before its addition to the distilled spirits product.

(b) *Reporting of additional deferral.* The tax so deferred will be reported on the semimonthly tax return (Form 5110.52), covering the period during which the distilled spirits products containing wine were tax determined. The additional deferral shall be noted on Form 5110.52 by modifying the form to cite this section of regulations and show the amount of tax in available space in the schedule of taxable transactions, as an adjustment decreasing the total tax due.

(c) *Remittance of additionally deferred tax.* All distilled spirits tax deferred in accordance with this section shall be paid with the fourth semimonthly tax return (Form 5110.52) which shall be filed by March 20, 1980, as provided in § 250.112. The additionally deferred tax shall be noted on Form 5110.52 by modifying the form to cite this section of regulations and show the amount of tax in available space in the schedule of taxable transactions, as an adjustment increasing the total tax due.

Signed: January 31, 1980.

G. R. DICKERSON,
Director.

Approved: January 31, 1980.

RICHARD J. DAVIS,
Assistant Secretary,
(Enforcement and
Operations).

(Filed by the Office of the Federal Register on January 31, 1980, 12:16 p.m., and published in the Federal Register for February 1, 1980, 45 F.R. 7529)

Subpart B—Tobacco

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF 65

27 CFR Part 72

Appraised Value of Seized and Forfeited Carriers; Seizures and Forfeitures of Contraband Cigarettes

AGENCY: The Bureau of Alcohol, Tobacco and Firearms.

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision amends the seizure and foreiture provisions by increasing from $2,500.00 to $10,000.00 the appraised value of seized carriers which may be administratively forfeited under the provisions of customs laws. Since the $2,500.00 limit precluded expeditious disposal of those goods and required the U.S. Government to pursue the time-consuming and costly judicial forfeiture process, the limit was raised to $10,000.00 by the Customs Procedural Reform and Simplification Act of 1978.

This Treasury decision also provides that contraband cigarettes are subject to seizure and forfeiture under the

provisions of criminal and internal revenue laws.

EFFECTIVE DATE: February 8, 1980.

(Section 111 of Pub. L. 95-410 was effective on October 3, 1978; all sections of Chapter 114, except 2342(b) and 2343, of Title 18, United States Code, were effective on November 2, 1978, (Public Law 95-575))

FOR FURTHER INFORMATION: Armida N. Stickney (202-566-7626).

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A. Relating to the Appraised Value Placed Upon Carriers

On October 3, 1978, the Customs Procedural Reform and Simplification Act of 1978 was signed into law (Pub. L. 95-410). Section 111 of this Act amended 19 U.S.C. 1607, 1610, and 1612 by increasing from $2,500.00 to $10,000.00 the appraised value of seizures which may be forfeited and disposed of without judicial forfeiture proceedings. Accordingly, any carrier seized for a violation under 49 U.S.C. Chapter 11, having a value of $10,000.00 or less, shall be forfeited to the U.S. Government in administrative forfeiture proceedings.

Consequently, Subpart C of 27 CFR Part 72 is amended to implement the statutory increase to $10,000.00.

B. Relating to Contraband Cigarettes

On November 2, 1978, Chapter 114—Trafficking in Contraband Cigarettes—was added to Title 18 of the United States Code (Pub. L. 95-575). Under 18 U.S.C. 2344(c) of this law, cigarettes involved in any violation of Chapter 114 shall be subject to seizure and forfeiture. Also, all the provisions of Title 26 of the United States Code relating to the seizure, forfeiture, and disposition of firearms (as defined in 26 U.S.C. 5845(a)) shall, as far as applicable, extend to seizures under the provisions of 18 U.S.C. Chapter 114.

Consequently, Subpart B of 27 CFR Part 72 is amended by adding the definition "contraband cigarettes" and by redefining "carriers".

Section 72.21, under Subpart C, is amended to include contraband cigarettes under the scope of property subject to seizure and forfeiture.

Subpart G is amended to cover the disposal of forfeited contraband cigarettes.

Other changes are editorial and clarifying in nature: Section 72.21 is further amended by deleting the reference to wagering laws; and § 72.65 is amended to clarify that the sale of tobacco products and cigarette papers and tubes is limited to those products seized for violation of internal revenue laws.

II. DRAFTING INFORMATION

The principal author of this Treasury decision is Armida N. Stickney of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. Officials from ATF and from the Department of Treasury, however, participated in developing this Treasury decision, both on matters of substance and style.

III. COMPLIANCE WITH EXECUTIVE ORDER 12044

This Treasury decision is necessary to implement Pub. L. 95-410 and Pub. L. 95-575. Since these Public Laws become effective on October 3, 1978, and on November 2, 1978, respectively, Richard J. Davis, Assistant Secretary (Enforcement and Operations), Department of the Treasury, has waived the work plan provision of Executive Order 12044, in accordance with paragraph 5(d) of Treasury Directive 50-04.F.

IV. AUTHORITY AND ISSUANCE

Because these amendments merely implement a statutory change relating to the value of carriers which may be administratively forfeited and make other clarifying changes requiring no public initiative, it is impractical, unnecessary, and contrary to the public interest to issue this Treasury decision with notice and public procedures under 5 U.S.C. 553(b).

The effective date of this regulation will not be delayed for 30 days as provided in 5 U.S.C. 553(d), because ATF has been using these statutory rules since the effective date of the Act and no change in procedures is contemplated. This Treasury decision is issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended), in 49 U.S.C. 788 (53 Stat. 1293), and in 18 U.S.C. 2346.

Accordingly, 27 CFR Part 72 is amended to read as follows:

1. The table of sections is amended to read as follows:

* * * * *

Sec.
72.65 Sale of forfeited tobacco products and cigarette papers and tubes.

* * * * *

Subpart G—Disposal of Forfeited Firearms, Ammunition, Explosive Materials, or Contraband Cigarettes

* * * * *

2. Section 72.11 is amended by revising the meaning of *Carrier*, and by adding contraband cigarettes, in the appropriate alphabetical order.

§ 72.11 Meaning of terms.

* * * * *

Carrier. A vessel, vehicle, or aircraft seized under 49 U.S.C. Chapter 11 for having been used to transport, carry, or conceal a contraband firearm or contraband cigarettes. Vessels, vehicles, or aircraft seized under other provisions of applicable laws shall be considered personal property.

* * * * *

Contraband cigarettes. Any quantity of cigarettes in excess of 60,000, if—

(a) The cigarettes bear no evidence of the payment of applicable State cigarette taxes in the State where the cigarettes are found;

(b) The State in which the cigarettes are found requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than any person who is—

(1) Holding a permit issued under 26 U.S.C. Chapter 52 as a manufacturer of tobacco products or as an export warehouse proprietor;

(2) Operating a customs bonded warehouse under 19 U.S.C. 1311 or 1555;

(3) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(4) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(5) Licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to the license or authorization with respect to the cigarettes involved; or

(6) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(7) Operating within a foreign-

trade zone, established under 19 U.S.C. 81b, when the cigarettes involved have been entered into the foreign-trade zone under zone-restricted status or when foreign cigarettes have been admitted into the foreign-trade zone but have not been entered into the United States.

* * * * *

§ 72.21 [Amended]

3. Section 72.21 is amended by (1) deleting the wording "35 (wagering)," and (2) inserting between the wording "59 (liquor traffic)," and "229 (liquor)," the wording "114 (contraband cigarettes),".

§ 72.22 [Amended]

4. Section 72.22 is amended (1) by changing in paragraph (a)(1) the phrase "by the seizing officer at $2,500.00 or less" to read "by the seizing officer at $10,000.00 or less"; (2) by replacing the amount of "$2,500.00" with "$10,000.00" wherever it appears in paragraphs (a)(4) and (a)(5); (3) by changing in paragraph (b) the phrase "where the appraised value of the seized personal property or carrier exceeds $2,500.00" to read "where the appraised value of the seized personal property exceeds $2,500.00 or where the appraised value of the seized carrier exceeds $10,000.00"; and (4) by adding the statutory provision, "(Sec. 111, Pub. L. 95-410, 92 Stat. 897, as amended (19 U.S.C. 1607, 1610, 1612))", at the end of the section.

5. Section 7265, is amended by revising the title and the first sentence to read as set forth below:

§ 72.65 Sale of forfeited tobacco products and cigarette papers and tubes.

All tobacco products and cigarette papers and tubes forfeited under the internal revenue laws shall be sold at a price which will include the tax due and payable on those forfeited articles. * * *

6. The centerhead to Subpart G and § 72.81 are revised to read as follows:

Subpart G—Disposal of Forfeited Firearms, Ammunition, Explosive Materials, or Contraband Cigarettes

§ 72.81 Authority for disposal.

Forfeited firearms, ammunition, explosive materials, or contraband cigarettes, not the subject of an allowed petition, may only be disposed of in accordance with the provisions of 26 U.S.C. 5872(b).

(18 U.S.C. 2344(c))

Signed: November 30, 1979.

G. R. Dickerson,
Director.

Approved: January 31, 1980.

Richard J. Davis,
Assistant Secretary
(Enforcement and
Operations).

(Filed by the Office of the Federal Register on February 7, 1980, 8:45 a.m., and published in the Federal Register for February 8, 1980, 45 F.R. 8592)

Bureau Rulings PART II

Subpart A—Alcohol

27 CFR 213.101: AUTHORIZED USES

(Also, 213.104, 213.105)

Veterinary hospitals or charitable veterinary clinics may withdraw alcohol free of tax for the treatment of animals.

ATF Rul. 80-1

The Bureau of Alcohol, Tobacco and Firearms has been asked whether alcohol may be withdrawn free of tax by veterinary hospitals or charitable veterinary clinics for the treatment of animals.

Under the provisions of 26 U.S.C. 5214(a)(3)(C) and (D), distilled spirits on which Internal Revenue tax has not been paid or determined may, subject to such regulation as the Secretary may prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers free of tax for nonbeverage purposes and not for resale or for use in the manufacture of any product for sale. Such spirits may be used at any hospital, blood bank, or sanitarium (including use in making any analysis or test at such hospital or blood bank, or sanitarium), or at any pathological laboratory exclusively engaged in making analysis, or tests, for hospitals or sanitariums. Such spirits may also be used at any clinic operated for charity and not for profit (including use in the compounding of bona fide medicines for treatment outside of such clinics of patients thereof). The regulations in 27 CFR 213.104 and 213.105 implement 26 U.S.C. 5214(a)(3)(C) and (D), respectively.

Held, veterinary hospitals or charitable veterinary clinics are within the purview of 26 U.S.C. 5214(a)(3)(C) and (D), respectively. Therefore, veterinary hospitals or charitable veterinary clinics may withdraw alcohol free of tax for the treatment of animals, under the respective provisions of 27 CFR 213.104 and 213.105.

27 CFR 213.104: HOSPITALS, BLOOD BANKS, AND SANITARIUMS

Veterinary hospitals or charitable veterinary clinics may withdraw alcohol free of tax for the treatment of animals. See ATF Rul. 80-1, above.

27 CFR 213.105: CLINICS

Charitable veterinary clinics may withdraw alcohol free of tax for the treatment of animals. See ATF Rul. 80-1, above.

27 CFR 240.524: FINISHING OF WINE

Limitations on substances foreign to wine. See ATF Rul. 80-2, below.

27 CFR 240.1052: NOTICE

(Also 240.524)

Sodium citrate may be employed as a pH control and smoothening agent in the treatment of grape wines, before filtration, at a maximum use level of 0.1 gram per 100 milliliters. ATF Rul. 79-12 supplemented.

ATF Rul. 80-2

The Bureau of Alcohol, Tobacco and Firearms has been asked to authorize the use of sodium citrate in the treatment of grape wines at a maximum use level of 0.1 gram per 100 milliliters.

Held, the Director of the Bureau of Alcohol, Tobacco and Firearms, has determined that the use of sodium citrate in the treatment of grape wines at a maximum use level of 0.1 gram per 100 milliliters is consistent with good commercial practice and, accordingly, is approved for use by proprietors of bonded wine cellars in the treatment of grape wine as a pH control and smoothening agent, within the general limitations of 27 CFR 240.524.

A winemaker desiring to use sodium citrate at a level not exceeding 0.1 gram per 100 milliliters of grape wine may obtain approval for such use from his regional regulatory administrator by filing notice pursuant to the provisions of 27 CFR 240.1052.

ATF Ruling 79-12, ATF Q.B. 1979-2, is hereby supplemented.

Bureau Procedures PART III

Subpart A—Alcohol

26 CFR 601.301: IMPOSITION OF TAXES, QUALIFICATION REQUIREMENTS, IN REGULATIONS

(Also 27 CFR 240.488, 240.900, and 240.910)

Reporting Wines Produced Under 27 CFR 240.488 on ATF Form 5120.17(702), Monthly Report of Wine Cellar Operations.

ATF Proc. 80-1

Section 1. Purpose.

This ATF Procedure is to inform proprietors of bonded wine cellars who produce or receive in bond wines produced under 27 CFR 240.488 of new reporting requirements.

Sec. 2. Background.

Treasury Decision ATF-62 (44 FR 71613) effective January 1, 1980, which implemented regulatory changes for the Distilled Spirits Tax Revision Act of 1979 (Public Law 96-39), revised 27 CFR 240.488 to allow wine to be made with materials not authorized for use in standard wine production.

Treasury Decision ATF-63, page 1, effective February 1, 1980, which eliminated and simplified certain public use forms, revised 27 CFR 240.910 to include maintenance of records for wine produced under 27 CFR 240.488. The records required for wines under 27 CFR 240.488 are similar to the records required for special natural wines.

Because these wines can be produced and received in bond beginning January 1, 1980, the Bureau has decided to secure more statistics about these wines. This will be accomplished on a revised ATF Form 5120.17(702), Monthly Report of Wine Cellar Operations.

Sec. 3. Reporting Procedure.

Proprietors of bonded wine cellars producing or receiving in bond wines under 27 CFR 240.488 shall report the total gallons produced and the total gallons removed taxpaid during the month, and the total gallons on hand at the end of the month in Part X—Remarks of the 6-79 edition of Form 5120.17(702) or in Part IX—Special Natural Wines and 27 CFR 240.488 Wines of the 1-80 edition of Form 5120.17(702).

Sec. 4. New Edition (1-80) of ATF F 5120.17(702).

The 1-80 edition of Form 5120.17 will have items for reporting the information required above. Proprietors of bonded wine cellars who want this new edition (1-80) of Form 5120.17 (702) should order the forms from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206.

Sec. 5. Effective Date.

This procedure is effective on February 1, 1980. Form 5120.17(702) for the month of February 1980 shall include the additional information required by this ATF procedure.

SEC. 6. INQUIRIES.

Inquiries regarding this ATF Procedure should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

27 CFR 240.488: OTHER WINES

Reporting wine produced under 27 CFR 240.488 on ATF Form 5120.17(702), Monthly Report of Wine Cellar Operations. See ATF Proc. 80-1, above.

27 CFR 240.900: FORM 5120.17

Reporting wines produced under 27 CFR 240.488 on ATF Form 5120.17(702), Monthly Report of Wine Cellar Operations. See ATF Proc. 80-1, above.

27 CFR 240.910: RECORD OF SPECIAL NATURAL WINE AND OTHER WINE PRODUCTION

Reporting wines produced under 27 CFR 240.488 on ATF Form 5120.17(702), Monthly Report of Wine Cellar Operations. See ATF Proc. 80-1, above.

Legislation PART IV

Subpart A—Currently Enacted Legislation

Public Law 96-180
96th Congress, S. 440[1]
January 2, 1980

An Act to revise and extend the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1979".

* * * * *

Sec. 19. Title III is amended by adding at the end the following:

"Part D—Report

"report

"Sec. 334. (a) Not later than June 1, 1980, the Secretary of Health, Education, and Welfare, acting through the Assistant Secretary for Health, and the Secretary of the Treasury, acting through the Assistant Secretary for Enforcement and Operations, shall jointly report to the President and the Congress—

"(1) the extent and nature of birth defects associated with alcohol consumption by pregnant women,

"(2) the extent and nature of other health hazards associated with alcoholic beverages, and

"(3) the actions which should be taken by the Federal Government under the Federal Alcohol Administration Act and the Federal Food, Drug, and Cosmetic Act with respect to informing the general public of such health hazards.

"(b) Subsection (a) shall not be construed to limit the authority of the Attorney General, the Secretary of the Treasury, or the Secretary of Health, Education, and Welfare under the Federal Alcohol Administration Act or the Federal Food, Drug, and Cosmetic Act".

Approved January 2, 1980.

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[1] House Report No. 96-193 and Senate Report No. 96-103 are not published. A Senate floor amendment S. 440 required warning labels for distilled spirits. House-Senate Compromise Agreement in lieu of conference report below.

Subpart B—Committee Reports

Explanation of House-Senate Compromise Agreement on S. 440 In Lieu of Conference Report[1]

* * * * *

REPORT ON ALCOHOL-RELATED HEALTH RISKS

The Secretary of Health, Education, and Welfare, acting through the Assistant Secretary for Health, and the Secretary of the Treasury, acting through the Assistant Secretary for

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[1] Congressional Record, December 19, 1979 (daily edition) page S. 19126. Public Law 96-180 above.

Enforcement and Operations, are required to report to Congress and the President, not later than June 1, 1980, concerning the extent and nature of birth defects associated with alcohol consumption by pregnant women, the nature of other health hazards associated with alcoholic beverages and the actions which should be taken by the Federal Government under the Federal Alcohol Administration Act and the Federal Food, Drug and Cosmetic Act with respect to informing the general public of such health hazards. In preparing their recommendations, the Secretaries should consult with representatives of the medical profession, the alcoholic beverage industry, the National Advisory Council on Alcohol Abuse and Alcoholism, and other groups and organizations concerned and knowledgeable about informing the general public of these health hazards. The Senate had required a health warning label on beverages containing more than 24% alcohol by volume.

* * * * *

Administrative Matters PART V

Subpart A—Administration and Procedural Practice Regulations

26 CFR 301.6621: DETERMINATION OF RATE OF INTEREST

The adjusted rate of interest on underpayments and overpayments of taxes, as determined under the provisions of section 6621(b) of the Code, will be 12 percent effective February 1, 1980.

Rev. Rul. 79-366

Under the provisions of section 6621(b) of the Internal Revenue Code the Secretary or a delegate is required to establish an adjusted rate of interest not later than October 15, 1979, to become effective February 1, 1980, if the adjusted prime rate charged by banks during September 1979, rounded to the nearest full percent, is at least a full percentage point more or less than the 6 percent per annum rate in effect during September 1979. The adjusted rate of interest shall be equal to the adjusted prime rate charged by banks, rounded to the nearest full percent. For purposes of section 6621 the term "adjusted prime rate charged by banks" means 90 percent of the average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System.

The Board of Governors of the Federal Reserve System has determined that the average predominant prime rate quoted by commercial banks to large businesses during September 1979, was 12.9 percent. Therefore, the "adjusted prime rate charged by banks" during September was 11.61 percent (12.9 percent multiplied by 90 percent). That rate rounded to the nearest full percent is 12 percent, a charge of at least 1 percent from the 6 percent per annum rate.

Accordingly, an adjusted rate of interest of 12 percent per annum is hereby established under section 6621(b). The adjusted rate shall take effect on February 1, 1980, and shall apply to amounts outstanding on such date or arising thereafter.

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Announcements PART VI

Announcement 80-1

Major Disaster Areas Proclaimed By The President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Dated Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
December 31, 1979	WASHINGTON Counties of: Clallam, Grays, Harbor, Jefferson, King, Kitsap, Mason, Skagit, Snohomish, and Whatcom	Severe storms beginning on or about December 13-23, 1979
February 19, 1980	ARIZONA Counties of: Gila, Maricopa, Yavapai, Mohave, Fort Apache Indian Reservation, and San Carlos Indian Reservation	Severe storms and flooding beginning on or about February 13, 1980
February 21, 1980	CALIFORNIA Counties of: Los Angeles, Orange, Riverside, Santa Barbara, San Bernardino, San Diego, and Ventura	Severe storms, mud slides, and flooding beginning on or about January 8, 1980

Announcement 80-2

Statistical tabulation of firearms manufactured in the United States and firearms exported during Fiscal Year 1979

The following statistics represent the number of firearms manufactured in the United States during the period 1 October 1978 through 30 September 1979, and the number of these firearms which were subsequently exported. These figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only those weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of Firearm Produced	Oct 78-Dec 78	Jan 79-Mar 79	Apr 79-Jun 79	Jul 79-Sept 79	Oct 78-Sept 79
Pistols	146,122	144,579	169,347	152,870	612,918
Revolvers	374,791	406,340	398,535	333,433	1,513,099
Rifles	459,107	508,539	512,267	397,977	1,877,890
Shotguns & Comb. guns	297,029	361,589	369,828	290,645	1,319,091
Machineguns	12,892	16,135	16,657	13,985	59,669
Any other weapon	0	0	0	0	0

Type of Firearm Exported	Oct 78-Dec 78	Jan 79-Mar 79	Apr 79-Jun 79	Jul 79-Sept 79	Oct 78-Sept 79
Pistols	4,601	5,266	7,434	5,791	23,092
Revolvers	54,189	48,161	52,603	45,845	200,798
Rifles	55,629	27,574	54,565	30,494	168,262
Shotguns & Comb. guns	40,888	29,870	33,268	22,243	126,269
Machineguns	16,046	16,181	15,158	13,427	60,821
Any other weapon	0	0	0	0	0

Announcement 80-3

Supreme Court Decision

Ct. D. 13

SUPREME COURT OF THE UNITED STATES

No. 78-1453

United States et al.,
Petitioners
v.
Harvey F. Euge

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

February 20, 1980

Syllabus

No. 78-1453. Argued November 26, 1979—Decided February 20, 1980

Section 7602 of the Internal Revenue Code of 1954 authorizes the Internal Revenue Service to summon individuals to "appear," and "to produce such books, papers, records, or other data, and to give testimony," as may be relevant to a tax investigation. During an investigation of respondent's income tax liability, in an effort to determine whether deposits in certain bank accounts not registered in respondent's name represented income attributable to him, an IRS agent issued a summons requiring respondent to appear and execute handwriting exemplars of the various signatures appearing on the bank signature cards. When respondent refused to comply with the summons, the United States brought suit to enforce it. The District Court held that the summons should be enforced, but the Court of Appeals reversed, holding that the summons authority under § 7602 does not authorize the IRS to compel the execution of handwriting exemplars.

Held: The IRS is empowered to compel handwriting exemplars under its summons authority conferred by § 7602. Pp. 3-12.

(a) While § 7602's language may not be explicit in authorizing handwriting exemplars, the duty to appear and give testimony has traditionally encompassed a duty to provide some forms of nontestimonial, physical evidence, including handwriting exemplars. By imposing an obligation to produce documents as well as to appear and give testimony, § 7602's language suggests an intention to codify a broad testimonial obligation, including an obligation to provide some physical evidence relevant and material to a tax investigation. From this authority to compel the production of some physical evidence, it can properly be concluded that the authority extends to the execution of handwriting exemplars, one variety of physical evidence. Pp. 4-7.

(b) This Court has consistently construed congressional intent to require that if the claimed summons authority is necessary for the effective performance of congressionally imposed responsibilities to enforce the Internal Revenue Code, that authority should be upheld absent express statutory prohibition or substantial countervailing congressional policies. Pp. 7-8.

(c) The authority claimed here is necessary for the effective exercise of the IRS's enforcement responsibilities. Handwriting exemplars are often an important evidentiary component in establishing tax liability, the use of such exemplars being an effective method for determining whether a particular name is an alias of a taxpayer. Pp. 8-9.

(d) Moreover, the authority claimed here is entirely consistent with the statutory language and is not in derogation of any countervailing policies or any constitutional rights, compulsion of handwriting exemplars being neither a search or seizure subject to Fourth Amendment protections nor testimonial evidence protected by the Fifth Amendment privilege against self-incrimination. Pp. 9-11.

587 F. 2d 25, reversed.

REHNQUIST, J., delivered the opinion of the Court, in which BURGER, C. J., and STEWART, WHITE, BLACKMUN, and POWELL, JJ., joined. BRENNAN, J., filed a dissenting opinion, in which MARSHALL and STEVENS, JJ., joined. MARSHALL, J., filed a dissenting opinion.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

The United States sued in the District Court seeking enforcement of an Internal Revenue Service summons requiring respondent to appear and provide handwriting exemplars. Enforcement was denied by the Court of Appeals for the Eighth Circuit, *United States* v. *Euge,* 587 F. 2d 25 (CA8 1978) (en banc), and we granted certiorari.[1] We now hold that Congress has empowered the IRS to compel handwriting exemplars under its summons authority conferred by 26 U.S.C. § 7602.

I

The facts are not in dispute. In October 1977, an agent in the Intelligence Division of the Internal Revenue Service was assigned to investigate respondent's income tax liability for the years 1973 through 1976. Respondent had not filed any tax returns for those years. The Service sought to employ the "bank deposits method" of reconstructing respondent's income for those years, as a means of calculating his tax liability. Under this method of proof, the sums deposited in the taxpayer's bank accounts are scrutinized to determine whether they represent taxable income.

During the course of the investigation, the agent found only two bank accounts registered in respondent's name. Twenty other bank accounts were discovered, however, which the agent had reason to believe were being maintained by respondent under aliases to conceal taxable income. The statements for these accounts were sent to post office boxes held in respondent's name; the signature cards for the accounts listed addresses of properties owned by respondent; and the agent had documented frequent transfers of funds between the accounts.

In an effort to determine whether the sums deposited in these accounts represented income attributable to respondent, the agent issued a summons on October 7, 1977, requiring respondent to appear and execute handwriting exemplars of the various signatures appearing on the bank signature cards. Respondent declined to comply with the summons.

The United States commenced this action under 26 U.S.C. § 7604(a). The District Court held that the summons should be enforced, ordering respondent to provide 10 handwriting exemplars of eight different signatures. The Court of Appeals reversed, ruling that the summons authority vested in the Internal Revenue Service under 26 U.S.C. § 7602 does not authorize the IRS to compel the execution of handwriting exemplars.[2]

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[1] The Fourth Circuit reached a contrary result in *United States* v. *Rosinsky,* 547 F. 2d 249 (CA4 1977). The Sixth Circuit decided this issue in accord with the Eighth Circuit. *United States* v. *Brown,* 536 F. 2d 117 (CA6 1976).

The structure and history of the statutory authority of the Internal Revenue Service to summon witnesses to produce evidence necessary for tax investigations has been repeatedly reviewed by this Court in recent years. See ***Reisman*** v. ***Caplin,*** 375 U.S. 440 (1964); ***United States*** v. ***Powell,*** 379 U.S. 48 (1964); ***Donaldson*** v. ***United States,*** 400 U.S. 517 (1971); ***United States*** v. ***Bisceglia,*** 420 U.S. 141 (1975); ***Fisher*** v. ***United States,*** 425 U.S. 391 (1976); ***United States*** v. ***LaSalle National Bank,*** 437 U.S. 298 (1978). Under § 7602, the Secretary of the Treasury, and therefore the IRS as his designate,[3] is authorized to summon individuals to "appear before the Secretary . . . and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to such inquiry. . . ."[4] The question presented here is whether this power to compel a witness to "appear," to produce "other data," and to "give testimony," includes the power to compel the execution of handwriting exemplars. We conclude that it does, for several reasons. While the language may not be explicit in its authorization of handwriting exemplars, the duty to appear and give testimony, a duty imposed by § 7602, has traditionally encompassed a duty to provide some forms of nontestimonial, physical evidence, including handwriting exemplars. Further, this Court has consistently construed congressional intent to require that if the summons authority claimed is necessary for the effective performance of congressionally imposed responsibilities to enforce the tax code, that authority should be upheld absent express statutory prohibition or substantial countervailing policies. The authority claimed here is necessary for the effective exercise of the Service's enforcement responsibilities; it is entirely consistent with the statutory language; and it is not in derogation of any constitutional rights or countervailing policies enunciated by Congress.

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[2] The precise reasons for the Court's holding are not clear. In the opinion, the Court suggests that the statute does not authorize the IRS to compel a taxpayer to create evidence "out of thin air." 587 F. 2d, at 27, n. 3. The opinion also states, however, that it adopts the views expressed in the dissenting opinion in *United States* v. *Campbell,* 525 F. 2d 604 (CA8 1975). The principal reason forwarded in that decision for declining to construe § 7602 to authorize production of handwriting exemplars was the conclusion that such an order would constitute a seizure in violation of the Fourth Amendment. Neither rationale supports the conclusion reached by the Court of Appeals. See *infra,* at —.

[3] Responsibility for administration and enforcement of the revenue laws is vested in the Secretary of the Treasury, 26 U. S. C. § 7801(a). The Internal Revenue Service, however, is organized to carry out those responsibilities for the Secretary. See ***Donaldson*** v. ***United States, supra,*** 400 U. S., at 534; 35 Fed. Reg. 2417 ***et seq.*** (1970). For the purposes of this opinion, we refer to the authority and responsibilities of the Secretary and the Service interchangeably.

[4] "SEC. 7602. Examination of Books and Witnesses.

"For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

"(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

"(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

"(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry."

A

Through § 7602, Congress has imposed a duty on persons possessing information "relevant of material" to an investigation of federal tax liability to produce that information at the request of the Secretary or his delegate. That duty to provide relevant information expressly obligates the person summoned to produce documentary evidence and to "appear" and "give testimony." Imposition of such an evidentiary obligation is, of course, not a novel innovation attributable to § 7602. The common law has been the source of a comparable evidentiary obligation for centuries. In determining the scope of the obligation Congress intended to impose by use of this language, we have previously analogized, as an interpretive guide, to the common-law duties attaching to the issuance of a testimonial summons. See *United States* v. *Bisceglia,* 420 U.S. 141, 147-148 (1975); *United States* v. *Powell,* 379 U.S. 48, 57 (1964). Congress, through legislation, may expand or contract the duty imposed,[5] but absent some contrary expression, there is a wealth of history helpful in defining the duties imposed by the issuance of a summons.

The scope of the "testimonial" [6] or evidentiary duty imposed by common law or statute has traditionally been interpreted as an expansive duty limited principally by relevance and privilege. As this Court described the contours of the duty in *United States* v. *Bryan,* 339 U.S. 323, 331 (1950): "[P]ersons summoned as witnesses by competent authority have certain minimum duties and obligations which are necessary concessions to the public interest in the orderly operation of legislative and judicial machinery. . . . We have often iterated the importance of this public duty, which every person within the jurisdiction of the Government is bound to perform when properly summoned." While the Court recognized that certain exemptions would be upheld, the "primary assumption" was that a summoned party must "give what testimony one is capable of giving" absent an exemption "grounded in a substantial individual interest which has been found, through centuries of experience, to outweigh the public interest in the search for truth." *Ibid.*

One application of this broad duty to provide relevant evidence has been the recognition, since early times, of an obligation to provide certain forms of nontestimonial physical evidence.[7] In *Holt* v. *United States,* 218 U.S. 245, 252-253 (1910) (Holmes, J.) the Court found that the common-law evidentiary duty permitted the compulsion of various forms of physical evidence. In *Schmerber* v. *California,* 384 U.S. 757, 764 (1966), this Court observed that traditionally witnesses could be compelled, in both state and federal courts, to submit to "fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture." See also *United States* v. *Wade,* 388 U.S. 218 (1967). In *Gilbert* v. *California,* 388 U.S. 263, 266-267 (1967), handwriting was held, "like the body itself" to be an "identifying physical characteristic," subject to production. In *United States* v. *Dionisio,* 410 U.S. 1 (1973), and *United States* v. *Mara,* 410 U.S. 19 (1973), this Court again confirmed that handwriting is in the nature of physical evidence which can be compelled by a grand jury in the exercise of its subpoena power. See also *United States* v. *Mullaney,* 32 Fed. 370 (CC Mo. 1887).

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[5] Legislative efforts to *expand* the scope of the testimonial obligation would, of course, be limited by the applicable constitutional guarantees.

[6] The word "testimony" has been used loosely in this context to refer to physical and documentary, as well as oral, evidence. See 8 Wigmore on Evidence § 2194, at 76 (McNaughton Rev. 1961).

[7] Wigmore has identified the testimonial duty as including an obligation "to disclose for the purpose of justice all that is in his control which can serve the ascertainment of the truth, [and] this duty includes not only mental impressions preserved in his brain and the documents preserved in his hands, but also the corporal facts existing on his body." 8 Wigmore on Evidence § 2194, at 76 (McNaughton Rev. 1961).

This broad duty to provide most relevant, nonprivileged evidence has not been considered to exist only in the common law. The Court has recognized that by statute "Congress may provide for the performance of this duty." *Blackmer* v. *United States,* 284 U.S. 421, 438 (1932). By imposing an obligation to produce documents as well as to appear and give testimony, we believe the language of § 7602 suggests an intention to codify a broad testimonial obligation, including an obligation to provide some physical evidence relevant and material to a tax investigation, subject to the traditional privileges and limitations. This conclusion seems inherent in the imposition of an obligation to "appear," since an obligation to appear necessarily entails an obligation to display physical features to the summoning authority. Congress thereby authorized the Service to compel the production of some physical evidence and it is certainly possible to conclude that this authorization extended to the execution of handwriting exemplars, one variety of relevant physical evidence. This construction of the language conforms with the historical notions of the testimonial duty attaching to the issuance of a summons.[8]

B

Congress certainly could have narrowed the common-law testimonial duty in enacting § 7602 and thus we do not rely solely on the common-law meaning of the statutory language. Section 7602 does not, by its terms, compel the production of handwriting exemplars, and therefore, a narrower interpretation of the duty imposed is not precluded by the actual language of the statute. A narrower interpretation *is* precluded, however, by the precedents of this Court construing that statute. As early as 1911, this Court established the benchmarks for interpreting the authority of the Internal Revenue Service to enforce tax obligations in holding that, "the administration of this statute may well be taken to embrace all appropriate measures for its enforcement, [unless] there is . . . substantial reason for assigning to the phrase[s] . . . a narrower interpretation." *United States* v. *Chamberlin,* 219 U.S. 250, 265 (1911). This precise mode of construction has consistently been applied by this Court in construing the breadth of the summons authority Congress intended to confer in § 7602. In *United States* v. *Powell,* 379 U.S. 48 (1964), the Court declined to construe § 7605 (b), prohibiting the Secretary from conducting "unnecessary examinations," to require probable cause for the issuance of a § 7602 summons. The Court found that "although a more stringent interpretation is possible, one which would require some showing of cause for suspecting fraud, we reject such an interpretation because it might seriously hamper the Commissioner in carrying out investigations he thinks warranted. . . ." *Id.*, at 53-54. In *Donaldson* v. *United States*, 400 U.S. 517 (1971), the Court refused to hold that the summons authority could not be used whenever there was a potential that the civil investigation might later lead to criminal prosecution. In construing the scope of the summons authority, the Court emphasized that it refused to draw the line in a manner that would "stultify enforcement of federal law." *Id.*, at 536. Finally, in *United States* v. *Bisceglia*, 420 U.S. 141 (1975), the Court upheld the Service's authority to issue a John Doe summons to a bank in order to discover the identity of an individual unknown to the Service. The Court reasoned that absent that construction, "no meaningful investigation of such events could be conducted" and thus "settled principles of statutory interpretation require that we avoid such a result absent unambiguous directions from Congress." *Id.*, at 150. There is thus a formidable line of precedent construing congressional intent to uphold the claimed enforcement authority of the Service if such authority is necessary for the effective enforcement of the revenue laws and is not undercut by contrary legislative purposes.[9]

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[8] As indicated elsewhere, we do not suggest that the evidentiary obligation codified in § 7602 in all respects conforms to the common law. We rely on the analogy only as one interpretive *guide*. *Supra,* at —.

Applying these principles, we conclude that Congress empowered the Service to seek, and obliged the witness to provide handwriting exemplars relevant to the investigation. First, there is no question that handwriting exemplars will often be an important evidentiary component in establishing tax liability. The statutory framework, as reviewed in the numerous precedents recited, *supra*, imposes on the Secretary of Treasury, and the IRS as his designate, a broad duty to enforce the tax laws. 26 U.S.C. § 7601 (a). Congress has legislated that the Secretary is "required to make the inquiries, determinations, and assessments of all taxes . . . imposed by this title. . . ." 26 U.S.C. § 6201(a). Under § 6301 the Secretary "shall collect taxes imposed by the Internal Revenue laws." In order to fulfill these duties, the Service will often need to determine whether a particular name is an alias of a taxpayer. One effective method for resolving that issue is through the use of handwriting exemplars.[10] As we recognized in *Bisceglia*, the IRS does have a need for investigative devices which assist them in ascertaining the identity of tax evaders. In *Bisceglia*, we held, in language relevant to this case, that:

> "[I]f criminal activity is afoot the persons involved may well have used aliases or taken other measures to cover their tracks. Thus, if the Internal Revenue Service is unable to issue a summons to determine the identity of such persons, the broad

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[9] Congressional intent to provide the Secretary with broad latitude to adopt enforcement techniques helpful in the performance of his tax collection and assessment responsibilities is expressed throughout the Act. In § 6302, for example, Congress has conferred the Secretary with discretion to devise methods of tax collection not specifically provided by statute:

"Whether or not the method of collecting any tax imposed . . . is specifically provided for by this title, any such tax may . . . be collected by . . . other reasonable devices or methods as may be necessary or helpful in securing a complete and proper collection of the tax."

[10] The United States suggests there are numerous uses of handwriting exemplars helpful to the Service. Not only are they useful in identifying the holder of a bank account, but they are also said to be useful for identifying persons who file multiple tax returns under false names claiming income tax refunds, purchase of money orders under false names, and forgery of joint returns to take advantage of lower joint rates.

inquiry authorized by § 7601 will be frustrated in this class of cases. Settled principles of statutory interpretation require that we avoid such a result absent unambiguous directions from Congress." 420 U.S., at 150.

There is certainly nothing in the statutory language,[11] or in the legislative history,[12] precluding the interpretation asserted by the Service. Nor is there any constitutional privilege of the taxpayer or other parties that is violated by this construction. Compulsion of handwriting exemplars is neither a search or seizure subject to Fourth Amendment protections, *United States* v. *Mara, supra,* nor testimonial evidence protected by the Fifth Amendment privilege against self-incrimination. *Gilbert* v. *California,* 388 U.S. 263 (1967). The compulsion of handwriting exemplars has been the subject of far less protection that the compulsion of testimony and documents.[13] Since Congress has explicitly established an obligation to provide the more protected forms of evidence, it would seem curious had it chosen not to impose an obligation to produce a form of evidence tradition has found it less important to protect.[14]

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[11] Respondent argues that the language of § 7602 suggests that it only requires the production of documents already in existence. Since handwriting exemplars must be created by the witness, it is argued that the statute is inapplicable. First, we do not view the exhibition of physical characteristics to be equivalent to the creation of documentary evidence. See *United States* v. *Dionisio,* 410 U. S. 1, 6 (1973). Further, the statute obviously contemplates the transformation of some evidence not formerly tangible, since it obligates the summoned individual to provide testimony. The testimony, of course, creates evidence not previously in existence. We see no difference between the nature of the evidence created when the witness is ordered to talk and that created when he is ordered to write.

We express no opinion on the scope of the Service's authority to otherwise order the witness to generate previously nonexistent documentation under § 7602. The Service in fact has expressly disclaimed any intention to order the creation of documents. The Internal Revenue Manual § 4022.64 (4) (1977) provides that an administrative summons:

> "should not require the witness to do anything other than to appear on a given date to give testimony and to bring with him/her existing books, papers, and records. A witness cannot be required to prepare or create documents."

The section states, however, that "[t]he giving of exemplars, for example, handwriting exemplars, at an appearance pursuant to a summons is not 'creating a document.' "

[12] The legislative history is simply unilluminating. The only conclusion which that history supports is that Congress did not intend to change the expanse of the § 7602 summons authority by its amendments in 1954. H. R. Rep. No. 1337, 83d Cong., 2d Sess. (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. (1954). Since there are no pre-1954 interpretations of the statute precluding the issuance of handwriting exemplars, the legislative history sheds no light on the construction intended by Congress.

[13] *Gilbert* v. *California,* 388 U. S. 263 (1967), demonstrates the minimal level of protection afforded handwriting exemplars, and the reasons why such protection is unnecessary. The Court found that production of the exemplars was not subject to the Fifth Amendment privilege, and that their creation did not represent a critical stage requiring counsel. The Court found only a "minimal risk that the absence of counsel might derogate from [a] right to a fair trial." *Id.,* at 267. The Court concluded that, "If for some reason, an unrepresentative exemplar is taken, this can be brought out and corrected through the adversary process of trial since the accused can make an unlimited number of additional exemplars for analysis and comparison by government and defense handwriting experts." *Ibid.*

[14] *Palmer* v. *United States,* 530 F. 2d 787 (CA8 1976) similarly construed 28 U. S. C. § 1826(a). That statute authorizes the imposition of contempt on witnesses who refuse to "testify or provide other information." The statute does not explicitly authorize contempt sanctions for refusal to execute handwriting exemplars. The Court found that the legislative history indicated that Congress had intended, through the use of the language employed in the statute, to "codify present civil contempt practice." Since that practice had included the power

As we have emphasized in other cases dealing with § 7602 proceedings, the summoned party is entitled to challenge the issuance of the summons in an adversary proceeding in federal court prior to enforcement, and may assert appropriate defenses. See *Bisceglia, supra,* 420 U.S., at 151. The Service must also establish compliance with the good-faith requirements recognized by this Court, *United States* v. *LaSalle National Bank,* 437 U.S. 298, 318 (1978), and with the requirement of § 7605(b) that "no taxpayer shall be subjected to unnecessary examination or investigations. . . ." These protections are quite sufficient to lead us to refuse to strain to imply additional ones from the neutral language Congress has used in § 7602.

We accordingly reverse the judgment of the Court of Appeals refusing enforcement of the summons.

Reversed.

Announcement 80-4

Supreme Court Decision

Ct. D. 14

SUPREME COURT OF THE
UNITED STATES

No.—78-1595

George Calvin Lewis, Jr.,
Petitioner,
v.
United States

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

February 27, 1980

Syllabus

No. 78-1595. **Argued January 7, 1980— Decided February 27, 1980**

Held: **Even though petitioner's extant prior state-court felony conviction may be subject to collateral attack under *Gideon* v. *Wainwright,* 372 U. S. 335, it could properly be used as a predicate for his subsequent conviction for possession of a firearm in violation of § 1202(a)(1) of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968. Pp. 5-12.**

(a) **The plain meaning of § 1202(a)(1)'s sweeping language proscribing the possession of firearms by any person who "has been convicted by a court of the United States or of a State . . . of a felony," is that the fact of a felony conviction imposes firearm disability until the conviction is vacated or the felon is relieved of his disability by some affirmative action. Other provisions of the statute demonstrate and reinforce its broad sweep, and there is nothing in § 1202(a)(1)'s legislative histroy to sugest that Congress was willing to allow a defendant to question the validity of his prior conviction as a defense to a charge under § 1202(a)(1). Moreover, the fact that there are remedies available to a convicted felon—removal of the firearm disability by a qualifying pardon or the Secretary of the Treasury's consent, as specified in the Act, or a challenge to the prior conviction in an appropriate court proceedings—suggests that Congress intended that the defendant clear his status *before* obtaining a firearm, thereby fulfilling Congress' purpose to keep firearms away from persons classified as potentially irresponsible and dangerous. Pp. 5-9.**

(b) **The firearm regulatory scheme at issue here is consonant with the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment, since Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm. And use of an uncounseled felony conviction as the basis for imposing a civil firearms disability, enforceable by criminal sanction, is not inconsistent with *Burgett* v. *Texas, 389* U.S. 109; *United States* v. *Tucker,* 404 U.S. 443; and *Loper* v. *Beto,* 405 U. S. 473. Pp. 10-12.**

591 F. 2d 978, **affirmed.**

BLACKMUN, J., **delivered the opinion of**

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to punish a witness for refusing to create a handwriting exemplar, the Court reasoned that Congress must have thought this phrasing adequate to cover production of handwriting samples.

the Court, in which Burger, C. J., and Stewart, White, Rehnquist, and Stevens, JJ., joined. Brennan, J., filed a dissenting opinion, in which Marshall and Powell, JJ., joined.

Mr. Justice Blackmun delivered the opinion of the Court.

This case presents the question whether a defendant's extant prior conviction, flawed because he was without counsel, as required by *Gideon* v. *Wainwright,* 372 U.S. 335 (1963), may constitute the predicate for a subsequent conviction under § 1202(a)(1), as amended, of Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. App. § 1202(a)(1).[1]

I

In 1961 petitioner George Calvin Lewis, Jr., upon his plea of guilty, was convicted in a Florida state court of a felony for breaking and entering with intent to commit a misdemeanor. See Fla. Stat. § 810.05 (1961). He served a term of imprisonment. That conviction has never been overturned, nor has petitioner ever received a qualifying pardon or permission from the Secretary of the Treasury to possess a firearm. See 18 U.S.C. App. § 1203(a) and 18 U.S.C. § 925(c).

In January 1977, Lewis, on probable cause, was arrested in Virginia, and later was charged by indictment with having knowingly received and possessed at that time a specified firearm, in violation of 18 U.S.C. App. § 1202(a)(1).[2] He waived a jury and was given a bench trial. It was stipulated that the weapon in question had been shipped in interstate commerce. The Government introduced in evidence an exemplified copy of the judgment and sentence in the 1961 Florida felony proceeding. App. 10.

Shortly before the trial, petitioner's counsel informed the court that he had been advised that Lewis was not represented by counsel in the 1961 Florida proceeding.[3] He claimed that under *Gideon* v. *Wainwright, supra,* a violation of § 1202(a)(1) could not be predicated on a prior conviction obtained in violation of petitioner's Sixth and Fourteenth Amendment rights. The court rejected that claim, ruling that the constitutionality of the outstanding Florida conviction was immaterial with respect to petitioner's status under § 1202(a)(1) as a previously convicted felon at the time of his arrest. Petitioner, accordingly, offered no evidence as to whether in fact he had been convicted in 1961 without the aid of counsel. We therefore assume, for present purposes, that he was without counsel at that time.

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[1] Section 1202(a) reads in full:

"Any person who—

"(1) has been convicted by a court of the United States or of a State or any political subdivision thereof a felony, or

"(2) has been discharged from the Armed Forces under dishonorable conditions, or

"(3) has been adjudged by a court of the United States or of a State or any political subdivision thereof of being mentally incompetent, or

"(4) having been a citizen of the United States has renounced his citizenship, or

"(5) being an alien is illegally or unlawfully in the United States, "and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both."

[2] The indictment also charged petitioner with a violation of 18 U. S. C. § 922(h)(1). That statute reads in pertinent part:

"It shall be unlawful for any person—

"(1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

"to receive any firearm . . . which has been shipped or transported in interstate . . . commerce."

Petitioner was acquited on the § 922(h)(1) charge and it is not before us here.

[3] Petitioner's counsel stated that a Florida attorney had advised him that the court records in that State showed affirmatively that Lewis had no lawyer. He noted also that Lewis had been charged with the same offense as had the defendant in *Gideon* v. *Wainwright,* 372 U. S. 335 (1963), and that petitioner had been tried in the same State about six months before Gideon was tried. App. 2-3.

On appeal, the United States Court of Appeals for the Fourth Circuit, by a divided vote, affirmed. 591 F.2d 978 (1979). It held that a defendant, purely as a defense to a prosecution under § 1202(a)(1), could not attack collaterally an outstanding prior felony conviction, and that the statutory prohibition applied irrespective of whether that prior conviction was subject to collateral attack. The Court of Appeals also rejected Lewis' constitutional argument to the effect that the use of the prior conviction as a predicate for his prosecution under § 1202 (a)(1) violated his rights under the Fifth and Sixth Amendments.

Because of conflict among the Courts of Appeals,[4] we granted certiorari. 442 U.S.—(1979).

Four cases decided by this Court provide the focus for petitioner's attack upon his conviction. The first, and pivotal one, is *Gideon* v. *Wainwright, supra,* where the Court held that a state felony conviction without counsel, and without a valid waiver of counsel, was unconstitutional under the Sixth and Fourteenth Amendments. That ruling is fully retroactive. *Kitchens* v. *Smith,* 401 U.S. 847 (1971).

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[4] Compare *United States* v. *Lufman*, 457 F. 2d 165 (CA7 1972) (use of an underlying felony conviction unconstitutionally obtained to support a conviction under § 1202(a)(1) is reversible error) with the Fourth Circuit's ruling in the present case, and with *United States* v. *Maggard,* 573 F. 2d 926 (CA6 1978); and *United States* v. *Graves,* 554 F. 2d 65 (CA3 1977) (en banc) (claim of constitutional error in the underlying conviction may not be raised). The Ninth Circuit has distinguished between a claim of constitutional invalidity in the underlying conviction, which it has held may be raised, and a claim that the underlying conviction has been, or should be, reversed on other grounds. Compare *United States* v. *O'Neal,* 545 F. 2d 85 (1976), and *United States* v. *Pricepaul,* 540 F. 2d 417 (1976), with *United States v. Liles,* 432 F. 2d 18 (1970). See also *United States* v. *Herrell,* 588 F. 2d 711 (CA9 1978), cert. denied, 440 U.S. 964 (1979) (underlying conviction in a prosecution under 18 U. S. C. § 922(h)(1) may not be challenged on nonconstitutional grounds).

The identical issue that is presented in this case has also arisen in the context of challenges to convictions under 18 U. S. C. § 922(g)(1) (proscribing shipping or transport of a firearm in interstate or foreign commerce by a person under indictment for, or convicted of, a felony) and § 922(h)(1) (proscribing receipt of a firearm shipped in interstate or foreign commerce by such a person). Compare *United States* v. *Scales,* 599 F. 2d 78 (CA5 1979); *Dameron* v. *United States,* 488 F. 2d 724 (CA 5 1947); *Pasterchik* v. *United States,* 466 F. 2d 1367 (CA9 1972); and *United States* v. *DuShane,* 435 F. 2d 187 (CA2 1970) (underlying conviction may be attacked as unconstitutional) with *Barker* v. *United States,* 579 F. 2d 1219, 1226 (CA10 1978) (underlying conviction may not be so challenged in prosecution under § 922(h)(1)).

The Courts of Appeals have treated the issue somewhat differently in prosecutions under 18 U. S. C. § 922(a)(6) (prohibiting the falsification of one's status as a convicted felon in purchasing a firearm). Nonuniformity has prevailed nonetheless on the question whether a defendant charged with violating that statute may challenge the constitutionality of the underlying felony conviction. Compare *United States* v. *O'Neal, supra,* and *United States v. Pricepaul, supra,* (permitting the challenge) with *United States* v. *Allen,* 556 F. 2d 720 (CA4 1977); *United States* v. *Graves, supra;* and *Cassity* v. *United States,* 521 F. 2d 1320 (CA6 1975) (holding that the challenge may not be made). The Eighth Circuit has stated that it will not permit a challenge to the constitutionality of the underlying conviction where the defendant is charged under § 922(a)(6), while reserving the question under § 1202 (a)(1) and §§ 922(g)(1) and (h)(1). *United States* v. *Edwards,* 568 F. 2d 68, 70-72, and n. 3 (1977). See also *United States* v. *Graves,* 554 F. 2d, at 83-88 (Garth, J., & Seitz, C. J., concurring & dissenting) (the Government need not prove the validity of the underlying conviction in a prosecution brought under § 922(a) (6), but it must do so in a prosecution under § 1202(a)(1)).

The second case is *Burgett* v. *Texas,* 389 U.S. 109 (1967). There the Court held that a conviction invalid under *Gideon* could not be used for enhancement of punishment under a State's recidivist statute. The third is *United States* v. *Tucker,* 404 U.S. 443 (1972), where it was held that such a conviction could not be considered by a court in sentencing a defendant after a subsequent conviction. And the fourth is *Loper* v. *Beto,* 405 U.S. 473 (1972), where the Court disallowed the use of the conviction to impeach the general credibility of the defendant. The prior conviction, the plurality opinion said, "lacked reliability." *Id.,* at 484, quoting *Linkleter* v. *Walker,* 381 U.S. 618, 639, and n. 20 (1965).

We, of course, accept these rulings for purposes of the present case. Petitioner's position, however, is that the four cases require a reversal of his conviction under § 1202(a)(1) on both statutory and constitional grounds.

III

The Court has stated repeatedly of late that in any case concerning the interpretation of a statute the "starting point" must be the language of the statute itself. *Reiter* v. *Sonotone Corp.,* —— U.S. ——, —— (1979) (slip op., pp. 3-4). See also *Touche Ross & Co.* v. *Redington,* —— U.S. ——, —— (1979) (slip op., pp. 7-8); *Southeastern Community College* v. *Davis,* —— U.S. ——, —— (1979) (slip op., p. 6). An examination of § 1202(a)(1) reveals that its proscription is directed unambiguously at any person who "has been convicted by a court of the United States or of a State . . . of a felony." No modifier is present, and nothing suggests any restriction on the scope of the term "convicted." "Nothing on the face of the statute suggests a congressional intent to limit its coverage to persons [whose convictions are not subject to collateral attack]." *United States* v. *Culbert,* 435 U.S. 371, 373 (1978); see *United States* v. *Naftalin,* 441 U.S. 768, 772 (1979). The statutory language is sweeping, and its plain meaning is that the fact of a felony conviction imposes a firearm disability until the conviction is vacated or the felon is relieved of his disability by some affirmative action, such as a qualifying pardon or a consent from the Secretary of the Treasury.[5] The obvious breadth of the language may well reflect the expansive legislative approach revealed by Congress' express findings and declarations, in 18 U.S.C. App. § 1201,[6] concerning the problem of firearm abuse by felons and certain specifically described persons.

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[5] One might argue, of course, that the language is so sweeping that it includes in its proscription even a person whose predicate conviction in the interim had been finally reversed on appeal and thus no longer was outstanding. The Government, however, does not go so far, Tr. of Oral Arg. 29-30, 37-40, and though we have no need to pursue that extreme argument in this case, we reject it. We are not persuaded that the mere possibility of making that argument renders the statute, as petitioner suggests, unconstitutionally vague. And unlike the dissent, *post,* at 2, we view the language Congress chose as consistent with the common-sense notion that a disability based upon one's status as a convicted felon should cease only when the conviction upon which that status depends has been vacated.

We note, nonetheless, that the disability effected by § 1202(a)(1) would apply while a felony conviction was pending on appeal. See Note, Prior Convictions and the Gun Control Act of 1968, 76 Colum. L. Rev. 326, 334, and n. 42 (1976).

[6] "The Congress hereby finds and declares that the receipt, possession, or transportation of a firearm by felons, veterans who are discharged under dishonorable conditions, mental incompetents, aliens who

Other provisions of the statute demonstrate and reinforce its broad sweep. Section 1203 enumerates exceptions to § 1202(a)(1) (a prison inmate who by reason of his duties has expressly been entrusted with a firearm by prison authority; a person who has been pardoned and who has expressly been authorized to receive, possess, or transport a firearm). In addition, § 1202(c)(2) defines "felony" to exclude certain state crimes punishable by no more than two years imprisonment. No exception, however, is made for a person whose outstanding felony conviction ultimately might turn out to be invalid for any reason. On its face, therefore, § 1202(a)(1) contains nothing by way of restrictive language. It thus stands in contrast with other federal statutes that explicitly permit a defendant to challenge, by way of defense, the validity or constitutionality of the predicate felony. See, *e.g.*, 18 U.S.C. § 3575(e) (dangerous special offender) and 21 U.S.C. § 851(c)(2) (recidivism under the Comprehensive Drug Prevention and Control Act of 1970).

When we turn to the legislative history of § 1202(a)(1), we find nothing to suggest that Congress was willing to allow a defendant to question the validity of his prior conviction as a defense to a charge under § 1202(a)(1). The section was enacted as part of Title VII of the Omnibus Crime Control and Safe Streets Acts of 1968, 82 Stat. 236. It was added by way of a floor amendment to the Act and thus was not a subject of discussion in the legislative reports. See *United States* v. *Batchelder,* 442 U.S. 114, 120 (1979); *Scarborough* v. *United States,* 431 U.S. 563, 569-570 (1977); *United States* v. *Bass,* 404 U.S. 336, 344, and n. 11 (1971). What little legislative history there is that is relevant reflects an intent to impose a firearms disability on any felon based on the fact of conviction. Senator Long, who introduced and directed the passage of Title VII, repeatedly stressed *conviction,* not a "valid" conviction, and not a conviction not subject to constitutional challenge, as the criterion. For example, the Senator observed:

> "So, under Title VII, every citizen could possess a gun until the commission of his first felony. Upon his conviction, however, Title VII would deny every assassin, murderer, thief and burglar of the right to possess a firearm in the future except where he has been pardoned by the President or a State Governor and has been expressedly authorized by his pardon to possess a firearm." 114 Cong. Rec. 14773 (1968).

See also *id.,* at 13868, 14774. Inasmuch as Senator Long was the sponsor and floor manager of the bill, his statements are entitled to weight. *Simpson* v. *United States,* 435 U.S. 6, 13 (1978).

It is not without significance, furthermore, that Title VII, as well as Title IV of the Omnibus Act, was enacted in response to the precipitous rise in political assassinations, riots,

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are illegally in the country, and former citizens who have renounced their citizenship, constitutes—

"(1) a burden on commerce or threat affecting the free flow of commerce,

"(2) a threat to the safety of the President of the United States and Vice President of the United States,

"(3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and

"(4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution."

and other violent crimes involving firearms, that occurred in this country in the 1960's. See, *e.g.*, S. Rep. No. 1097, 90th Cong., 2d Sess., 76-78 (1968); H.R. Rep. No. 1577, 90th Cong., 2d Sess., 7 (1968); S. Rep. No. 1501, 90th Cong., 2d Sess., 22-23 (1968). This Court, accordingly, has observed:

> "The legislative history [of Title VII] in its entirety, while brief, further supports the view that Congress sought to rule broadly—to keep guns out of the hands of those who have demonstrated that 'they may not be trusted to possess a firearm without becoming a threat to Society.'" *Scarborough* v. *United States,* 431 U.S., at 572.

The legislative history, therefore, affords no basis for a loophole, by way of a collateral constitutional challenge, to the broad statutory scheme enacted by Congress. Section 1202(a) was a sweeping prophylaxis, in simple terms, against misuse of firearms. There is no indication of any intent to require the Government to prove the validity of the predicate conviction.

The very structure of the Omnibus Act's Title IV, enacted simultaneously with Title VII, reinforces this conclusion. Each Title prohibits categories of presumptively dangerous persons from transporting or receiving firearms. See 18 U. S. C. §§ 922(g) and (h). Actually, with regard to the statutory question at issue here, we detect little significant difference between Title IV and Title VII. Each seeks to keep a firearm away from "any person . . . who has been convicted" of a felony, although the definition of "felony" differs somewhat in the respective statutes. But to limit the scope of §§ 922(g)(1) and (h)(1) to a validly convicted felon would be at odds with the statutory scheme as a whole. Those sections not only impose a disability on a convicted felon but also on a person under a felony indictment, even if that person subsequently is acquitted of the felony charge. Since the fact of mere indictment is a disabling circumstance, *a fortiori* the much more significant fact of conviction must deprive the person of a right to a firearm.

Finally, it is important to note that a convicted felon is not without relief. As has been observed above, the Omnibus Act, in §§ 1203(2) and 925(c), states that the disability may be removed by a qualifying pardon or the Secretary's consent. Also, petitioner, before obtaining his forearm, could have challenged his prior conviction in an appropriate proceeding in the Florida state courts. See Fla. Const. Art. 5, § 5(3); *L'Hommedieu* v. *State,* 362 So. 2d 72 (Fla. App. 1978); *Weir* v. *State,* 319 So. 2d 80 (Fla. App. 1975). See also *United States* v. *Morgan,* 346 U.S. 502 (1954).[7]

It seems fully apparent to us that the existence of these remedies, two of which are expressly contained in the Omnibus Act itself, suggests that Congress clearly intended that the defendant clear his status *before* obtaining a firearm, thereby fulfilling Congress' purpose "broadly to keep firearms away from the persons Congress classified as potentially irresponsible and dangerous." *Barrett* v. *United States,* 423 U. S. 212, 218 (1976).

With the face of the statute and the legislative history so clear, petitioner's argument that the statute nevertheless should be construed so as to avoid a constitutional issue is inapposite. That course is appropriate only when the statute provides a fair alternative construction. This statute could not be more plain. *Swain* v. *Pressly,* 430 U. S. 370, 378, and n. 11 (1977); *United States* v. *Batchelder,* 442 U. S., at 122-123. Similarly, any principle of lenity, see *Rewis* v. *United States,* 401 U. S. 808, 812 (1971), has no application. The touchstone of that principle is statutory ambiguity. *Huddleston* v. *United States,* 415 U. S. 814, 832 (1974); *United States* v. *Batchelder,* 442 U. S., at 121-122. There is no ambiguity here.

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[7] This being so, § 1202(a)(1) does not attach "what may amount to life-long sanctions to a mere finding of probable cause," as has been argued by one commentator. See Comment, 92 Harv. L. Rev. 1790, 1795 (1979).

We therefore hold that § 1202(a)(1) prohibits a felon from possessing a firearm despite the fact that the predicate felony may be subject to collateral attack on constitutional grounds.

IV

The firearm regulatory scheme at issue here is consonant with the concept of equal protection embodied in the Due Process Clause of the Fifth Amendment if there is "some 'rational basis' for the statutory distinctions made . . . or . . . they 'have some relevance to the purpose for which the classification is made.'" *Marshall* v. *United States,* 414 U. S. 417, 422 (1974), quoting from *McGinnis* v. *Royster,* 410 U. S. 263, 270 (1973), and *Baxstrom* v. *Herold,* 383 U. S. 107, 111 (1966). See *Vance* v. *Bradley,* 440 U. S. 93, 97 (1979).[8]

Section 1202(a)(1) clearly meets that test. Congress, as its expressed purpose in enacting Title VII reveals, 18 U. S. C. App. § 1201, was concerned that the receipt and possession of a firearm by a felon constitutes a threat, among other things, to the contained and effective operation of the Government of the United States. The legislative history of the gun control laws discloses Congress' worry about the easy availability of firearms, especially to those persons who pose a threat to community peace. And Congress focused on the nexus between violent crime and the possession of a firearm by any person with a criminal record, 114 Cong. Rec. 13220 (1968) (remarks of Sen. Tydings); *id.,* at 16298 (remarks of Rep. Pollock). Congress could rationally conclude that any felony conviction, even an allegedly invalid one, is a sufficient basis on which to prohibit the possession of a firearm. See, *e. g., United States* v. *Ransom,* 515 F. 2d 885, 891-892 (CA5 1975), cert. denied, 424 U. S. 944 (1976). This Court has recognized repeatedly that a legislature constitutionally may prohibit a convicted felon from engaging in activities far more fundamental than the possession of a firearm. See *Richardson* v. *Ramirez,* 418 U. S. 24 (1974) (disenfranchisement); *DeVeau* v. *Braisted,* 363 U. S. 144 (1960) (proscription against holding office in a waterfront labor organization); *Hawker* v. *New York,* 170 U. S. 189 (1898) (prohibition against the practice of medicine).

We recognize, of course, that under the Sixth Amendment an uncounseled felony conviction cannot be used for certain purposes. See *Burgett, Tucker,* and *Loper,* all *supra.* The Court, however, has never suggested that an uncounseled conviction is invalid for all purposes. See *Scott* v. *Illinois,* 440 U. S. 367 (1979); *Loper* v. *Beto,* 405 U. S. at 482, n. 11 (pluarlity opinion).

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[8] These legislative restrictions on the use of firearms are neither based upon constitutoinally suspect criteria, nor do they trench upon any constitutionally protected liberties. See *United States* v. *Miller,* 307 U. S. 174, 178 (1939) (the Second Amendment guarantees no right to keep and bear a firearm that does not have "some reasonable relationship to the preservation or efficiency of a well regulated militia"); *United States* v. *Three Winchester 30-30 Caliber Lever Action Carbines,* 504 F. 2d 1288, 1290, n. 5 (CA7 1975); *United States* v. *Johnson,* 497 F. 2d 548 (CA4 1974); *Cody* v. *United States,* 460 F. 2d 34 (CA8), cert. denied, 409 U. S. 1010 (1972) (the latter three cases holding, respectively, that § 1202(a)(1), § 922(g), and § 922(a)(6) do not violate the Second Amendment).

Use of an uncounseled felony conviction as the basis for imposing a civil firearms disability, enforceable by a criminal sanction, is not inconsistent with *Burgett, Tucker,* and *Loper.* In each of those cases, this Court found that the subsequent conviction or sentence violated the Sixth Amendment because it depended upon the reliability of a past uncounseled conviction. The federal gun laws, however, focus not on reliability, but on the mere fact of conviction, or even indictment, in order to keep firearms away from potentially dangerous persons. Congress' judgment that a convicted felon, even one whose conviction was allegedly uncounseled, is among the class of persons who should be disabled from dealing in or possessing firearms because of potential dangerousness is rational.[9] Enforcement of that essentially civil disability through a criminal sanction does not "support guilt or enhance punishment," see *Burgett,* 389 U. S., at 115, on the basis of a conviction that is unreliable when one considers Congress' broad purpose. Moreover, unlike the situation in *Burgett,* the sanction imposed by § 1202(a)(1) attaches immediately upon the defendant's first conviction.

Again, it is important to note that a convicted felon may challenge the validity of a prior conviction, or otherwise remove his disability, before obtaining a fireram. We simply hold today that the firearms prosecution does not open the predicate conviction to a new form of collateral attack. See Note, Prior Convictions and the Gun Control Act of 1968, 76 Colum. L. Rev. 326, 338-339 (1976). Cf. *Walker* v. *City of Birmingham,* 388 U. S. 307 (1967).

The judgment of the Court of Appeals is affirmed.

It is so ordered.

Announcement 80-5

Notice of Proposed Rulemaking (Extension of Comment Period)

ATF published in the 1979-2 Apr.-Jun. issue of the ATF Bulletin (page 52), a notice of proposed rulemaking concerning the recodification of the wine regulations. The comment period has now been extended an additional six months from February 20, 1980, to August 20, 1980.

All interested persons may submit written comments or sugestions, in duplicate, regarding these proposals, to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20404 (Attn: Chief, Regulations and Procedures Division).

Announcement 80-6

Recall of Alcoholic Product

Recently a quantity of distilled spirits bottled by Potter Distilleries, Inc., DSP-OR-4, Portland, Oregon, was withdrawn from the market after it was found to be deficient in proof. Potter bottled and shipped 667 cases of 750 ml size bottles of Western Canadian brand whiskey to the Washington Liquor Control Board and 424 cases of 750 ml bottles of Crown Canadian brand whiskey to the Michigan Liquor Control Board. All of the 667 cases of Western Canadian brand whiskey were sold to consumers and 110 cases of the Crown Canadian brand whiskey were returned for reconditioning.

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[9] The dissent's assertion that Congress' judgment in this regard cannot rationally be supported, *post,* at 5, is one we do not share. Moreover, such an assertion seems plainly inconsistent with the defense that a reviewing court should give to a legislative determination that, in essence, predicts a potential for future criminal behavior.

Announcement 80-7

Suspension of Permits

ATF suspended the basic permits of Warner Vineyards, Inc., Paw Paw, Michigan, for a period of seven consecutive days. The permittee violated the provisions of 26 U.S.C. 5362, 5367, 5368, and 5382 by: failing to properly prepare and maintain required records and reports; failing to follow stated formulas; and failing to properly identify contents of wine containers.

Announcement 80-8

Offer in Compromise

Investigation by ATF disclosed that Ballester Hermanos, Inc., San Juan, Puerto Rico, a wholesaler and importer of distilled spirits, wine and malt beverages, violated 27 U.S.C. 205(d) of the FAA Act by selling alcoholic beverages on consignment or under conditional sale or with the privilege of returning. In compromise of the civil and criminal liabilities incurred, ATF accepted an offer of $2,500.

Announcement 80-9

Offer in Compromise

MGM Grand Hotel Reno, Inc., Reno, Nevada, a retail liquor dealer, violated the provisions of 26 U.S.C. 5301(c)(1) through 5301(c)(4) by refilling liquor bottles, altering the contents of liquor bottles and possessing such refilled and altered liquor bottles. ATF accepted an offer of $125,000 in compromise of the criminal liabilities incurred.

Announcement 80-10

Offer in Compromise

ATF has accepted seven offers in compromise totaling $7,000 from the proprietors of Beverage Mart, Houston, Texas. The offers cover seven different locations in the Houston area. The proponents violated 26 U.S.C. 5117(a)(1), 5124, 5142(a), 5146, and 27 U.S.C. 203(c) of the FAA Act by: (1) purchasing distilled spirits for resale from persons who have not paid the special tax as wholesale dealers; (2) failing to keep proper records; (3) carrying on the business of a wholesale dealer in liquors without payment of the special tax; and (4) engaging in such business without obtaining a basic permit.

Announcement 80-11

Offer in Compromise

American Distilling Company, Pekin, Illinois, violated the provisions of 26 U.S.C. 5201 and 5207 of the Internal Revenue Code by failing to segregate controlled stock from other stock on controlled premises; failing to establish a physical inventory of controlled stock; and failing to accurately maintain required records. ATF accepted an offer of $10,000 in compromise of the civil and criminal liabilities imposed.

Announcement 80-12

Offer in Compromise

ATF has accepted an offer of $5,000 in compromise from Federal Distillers, Inc., Cambridge, Massachusetts, for violations of 27 U.S.C. 205(e) of the Federal Alcohol Administration Act. The proprietor improperly labeled distilled spirits which were not bottled in accordance with approved certificates of label approval and which were not bottled and labeled in accordance with approved formulas.

Announcement 80-13

Offer in Compromise (Tobacco)

The General Cigar and Tobacco Company, a division of the Culbro Corporation, of Kingston and Philipsburg, Pennsylvania, was charged by the Bureau with including prohibited sweepstakes lottery materials with packages of cigars in violation of 26 U.S.C. 5723(c). The company's offer of $20,000 to compromise the civil and criminal liabilities was accepted.

Announcement 80-14

Offer in Compromise

An importer and wholesaler of alcoholic beverages, Trigo Hnos., Inc., San Juan, Puerto Rico, violated the provisions of 27 U.S.C. 205(d) of the FAA Act. The permittee made numerous sales of alcoholic beverages on consignment or under conditional sale or with the privilege of return to a number of retail liquor dealers. ATF accepted an offer of $2,500 in compromise of the civil and criminal liabilities incurred.

Announcement 80-15

Offer in Compromise

A wine producer and blender, Franzia Brothers Winery, Ripon, California, violated the provisions of 26 U.S.C. 5351, 5357, 5361, 5362, 5367, 5368, and 205(e) of the FAA Act. The permittee: 1) conducted unapproved operations on its bonded premises, 2) stored untaxpaid wine in improperly constructed and secured bonded premises, 3) failed to maintain proper records, 4) failed to place required marks on cases, 5) failed to follow approved formula for effervescent wine and produced special natural wine without approved formula, 6) used carbon dioxide gas as a counterpressure when transferring wine between tanks, and 7) violated various other production requirements. An offer of $4,500 was accepted by ATF in compromise of the civil and criminal liabilities incurred.

Announcement 80-16

Offer in Compromise

A taxfree alcohol permittee, Exeter Hospital, Exeter, New Hampshire, violated the provisions of 26 U.S.C. 5001 and 5214. The permittee removed and furnished to a private laboratory, 325.3 proof gallons of taxfree alcohol. The laboratory was operated by certain physicians who used the alcohol primarily in connection with their private practices. An offer of $1,000 was accepted by ATF in compromise of the civil liabilities incurred.

Announcement 80-17

Revocation of Permits

ATF has revoked the importer's basic permits of (1) Joseph Joaquin Rey, Jr., La Jolla, California; (2) Harold S. Spiegal, d/b/a Lynton L. Shipman (Aust) Pty. Ltd., Hollywood, California; (3) Janice Christine Lowe d/b/a Jan's World Trade Enterprises, St. Claire Shores, Michigan; and, (4) La Barr Associates, Inc., Fort Lee, New Jersey, in accordance with 27 U.S.C. 204(e)(2) of the FAA Act. The permittees failed to engage in the operations authorized by the permits for a period of more than two years.

Announcement 80-18

Revocation of Permit

The tax free alcohol permit held by Prescott College, Prescott, Arizona, has been revoked by ATF in accordance with 26 U.S.C. 5271(e)(8). The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-19

Revocation of Permits

In accordance with 27 U.S.C. 204 (e)(2), ATF has revoked the wholesaler's basic permits of (1) Eugene Darold Deherrera, d/b/a Moke Hill Dist. Co., Mojeleumne Hill, California; (2) Flint Beverage Distributors, Division of Mihelic Dist., Inc., Flint, Michigan; (3) Marketing System International, Inc., d/b/a Marcus Caprice Wine Company, Los Angeles, California; and (4) R.B. & L. Industries, Inc., d/b/a Grecian Wines Unlimited of America, Redondo Beach, California. The permittees failed to engage in the operations authorized by their permits for a period of more than two years.

Announcement 80-20

Revocation of Permit (Tobacco)

In accordance with 26 U.S.C. 5713 (b), ATF has revoked the tobacco export warehouse permit of James P. Fox d/b/a International Chandlers, Southfield, Michigan. The permittee failed to notify ATF of its change in location of premises and submitted false monthly inventory reports, identifying as its location and business premises, an address and location which it did not occupy.

Announcement 80-21

Semiannual Agenda of Regulations

ATF published a notice in the Federal Register of February 15, 1980, the Semiannual Agenda of Regulations. This notice concerns the Regulatory Improvement Implementation Program which implements Executive Order 12044 and Treasury Directives 50-04.F. The required semiannual agenda is designed to give the public adequate notice of ATF regulatory activities which will be under development and review during the period February 1, 1980 through August 1, 1980. Information concerning specific items appearing in the following semiannual agenda should be directed to the appropriate contact person indicated. The next semiannual agenda will be published in the Federal Register for February 1, 1980.

PART I—REGULATIONS UNDER DEVELOPMENT

TITLE/CITATION	SUMMARY
ALCOHOL	
50 ml container for wine 27 CFR 4.73	*Description:* Adds a 50 ml (1.7 fluid ounce) size to the standards of fill for wine. [Rev.] *Need:* Some types of wine, especially sherry and port wines, have traditionally been produced in a miniature size for sale by airlines and railroads. Under current regulations, a size smaller than 100 ml may no longer be used in the United States. *Legal Basis:* 27 U.S.C. 205. *Contact:* Charles N. Bacon. *Status:* NPRM to be published in February 1980. *Priority:* C.
Grape Brandy 27 CFR Part 5	*Description:* ATF will consider whether standards of identity for "varietal grape brandy" should be added to the present labeling designations of "brandy" and "grape brandy". [Rev.]

TITLE/CITATION	SUMMARY
	Need: Responds to a petition to permit the production and sale of brandies produced from specific varieties of grapes. *Legal basis:* 27 U.S.C. 205. *Contact:* Armida N. Stickney. *Status:* ANPRM published January 2, 1980 (45 FR 50); comment period ends April 1, 1980. *Priority:* B.
Prohibited Trade Practices under the FAA Act 27 CFR Parts 6, 8, 10, and 11	*Description:* Implements the trade practice subsections, 5(a)-5(d), of the FAA Act. Regulations will specify practices which are prohibited by the FAA Act and will list exceptions to those prohibitions. [Rev.] *Need:* Provisions of the FAA Act have been implemented through letters, ATF Rulings, and circulars. A need exists to update, revise, and codify these rulings. *Legal basis:* 27 U.S.C. 205. *Contact:* Charles N. Bacon. *Status:* T.D. under development; publication targeted for June 1980. *Priority:* A.
American Viticultural Areas 27 CFR Part 9	*Description:* A new Part 9 entitled American Viticultural Areas was added to Title 27 of the Code of Federal Regulations. This part will list approved viticultural areas to be used as American appellations of origin in accordance with 27 CFR Part 4 (Appellation of Origin Regulations). [New] *Status:* T.D. w/o N. published October 2, 1979 (44 FR 56692).
Proposed Viticultural Area (Augusta, Missouri) 27 CFR 9.22	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* Public hearing transcript under study. (Inquire contact person for additional information on status.) *Priority:* A.
Proposed Viticultural Area (The Pinnacles, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* NPRM under internal development; publication targeted for February 1980. *Priority:* A

TITLE/CITATION	SUMMARY
Proposed Viticultural Area (Napa Valley, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* NPRM under internal development; publication targeted for February 1980. *Priority:* A.
Proposed Viticultural Area (Santa Maria Valley, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* Norman P. Blake. *Status:* Petition is being evaluated. (Inquire contact person for additional information on status.) *Priority:* A.
Proposed Viticultural Area (Los Carneros, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* Petition is being evaluated. (Inquire contact person for additional information on status.) *Priority:* A.
Proposed Viticultural Area (Sonoma Valley, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* James A. Hunt. *Status:* Petition is being evaluated. (Inquire contact person for additional information on status.) *Priority:* A.
Proposed Viticultural Area (Santa Cruz Mountains, California) 27 CFR Part 9	*Description:* Establishes an American viticultural area for the labeling and advertising of wine. [New] *Need:* Responds to a petition from an industry member to establish a viticultural area. *Legal basis:* 27 U.S.C. 205. *Contact:* James A. Hunt. *Status:* Petition is being evaluated. (Inquire contact person for additional information on status.) *Priority:* A.

TITLE/CITATION	SUMMARY
Determination of Color in White Wine and Treatment of Sherry with Activated Carbon 27 CFR Part 240	*Description:* ATF proposed to (1) replace the Lovibond Method with the Association of Official Analytical Chemists (AOAC) Method 11.B01-11.B02 for determining color in wine, (2) provide winemakers continuing authority to treat sherry with activated carbon in order to remove excess color, and (3) set a new limitation on the amount of activated carbon to remove the excess coloring sherry. [Rev.] *Need:* Regulatory changes may be necessary to accommodate technological advances. *Legal basis:* 26 U.S.C. 5382. *Contact:* Armida N. Stickney. *Status:* NPRM published July 10, 1979 (44 FR 40351); T.D. publication targeted for April 1980. *Priority:* C.
Regulations Implementing the Distilled Spirits Tax Revision Act of 1979 27 CFR Parts 5, 13 and 19 [formerly 186 and 201], 170, 173, 194, 195, 196, 197, 200, 211, 212, 213, 231, 240, 250, 251, and 252	*Description:* The Distilled Spirits Tax Revision Act of 1979 (1) eliminated the wine gallon method for imposing the distilled spirits tax, (2) eliminated the rectification tax, and (3) converted DSP/s from the former distilled spirits tax system to an all-in-bond tax system. [Rev.] *Needs:* The Act was passed by Congress as a part of the Trade Agreements Act of 1979 and became effective on January 1, 1980. As a result, ATF issued temporary regulations. *Legal basis:* Statutory provisions are contained in 26 U.S.C. Chapter 51. *Contact:* Edward J. Sheehan. *Status:* Temporary T.D. with N. published December 11, 1979 (44 FR 71612, 44 FR 71613). Comment period on temporary regulation ends September 11, 1980. T.D. publication targeted for March 1981. *Priority:* A.
Additional deferral of tax for distilled spirits containing wine 27 CFR Parts 19 and 250	*Description:* Allows bottlers of distilled spirits to additionally defer the distilled spirits tax on wine used in distilled spirits products. *Need:* Because of a new method of taxation, the distilled spirits industry is provided a transitional relief in paying the distilled spirits tax attributable to the wine component of distilled spirits products. Prior to January 1, 1980, the wine used in distilled spirits products was taxed generally at $0.17 or $0.67 per wine gallon. As of January 1, 1980, the wine component of the distilled spirits products is to be taxed as distilled spirits at the rate of $10.50 per proof gallon. *Legal basis:* 26 U.S.C. 5061. *Contact:* Edward J. Sheehan. *Status:* Temporary T.D. published February 1, 1980 (45 FR 7528).

TITLE/CITATION	SUMMARY
Formulas for Rectified Products [Form 27-B, Supplemental] 27 CFR Parts 170, 201, 250, and 252	*Description:* This regulatory project would (1) redesignate the form number and change the title on formulas for rectified products, (2) allow rectifiers to submit a single formula for multiple plant coverage, (3) eliminate the requirement in certain cases for formulas to include a statement of process, and (4) eliminate the requirement for riders to formulas. [Rev.] *Status:* These regulations were incorporated into the temporary regulations implementing the Distilled Spirits Tax Revision Act of 1979.
Alternate Premises between DSP/s and Bonded Wine Cellars or Taxpaid Wine Bottling Houses 27 CFR Parts 19 [formerly 201], 231, and 240	*Description:* Allows proprietors of DSP/s and contiguous bonded wine cellars or taxpaid bottling houses to alternate their premises without having to submit qualifying documents each time they propose an alternation. [New] *Status:* This regulation was incorporated into the temporary regulations implementing the Distilled Spirits Tax Revision Act of 1979.
Strip Stamps and Alternate Devices 27 CFR Parts 19 [formerly 201], 194, 250, 251, and 252	*Description:* Specific areas revised may include (1) authorization to use alternatives to strip stamps; (2) elimination of references to serial numbers on strip stamps in the regulations; (3) elimination of blue and white strip stamps and the substitution of green and red strip stamps, respectively; and (4) elimination of certain overprinting requirements on green strip stamps. [Rev.] *Status:* These regulations were incorporated into the temporary regulations implementing the Distilled Spirits Tax Revision Act of 1979.
Export Storage Facilities at DSP/s 27 CFR Part 19 [formerly 201]	*Description:* A liberalization of regulations relating to use of export storage facilities. These regulations would allow the transfer-in-bond of distilled spirits between different export storage facilities. [Res.] *Status:* These regulations were revoked by the Distilled Spirits Tax Revision Act of 1979.
Distilled Spirits Meters 27 CFR Part 19 [formerly 201]	*Description:* Regulations to permit tax payment gauging of distilled spirits by approved metering systems. [Res.] *Status:* The use of meters for tax determination was eliminated by the Distilled Spirits Tax Revision Act of 1979.
Samples of Distilled Spirits 27 CFR Part 19 [formerly 201]	*Description:* A liberalization of regulations relating to the withdrawal and use of distilled spirits for research, development, or testing purposes. Specific changes allow spirits to be withdrawn to central or commercial laboratories, ease recordkeeping requirements and eliminate the schedule of samples. [Rev.] *Status:* These regulations were incorporated into the temporary regulations implementing the Distilled Spirits Tax Revision Act of 1979.

TITLE/CITATION	SUMMARY
New Completely Denatured Alcohol Formula No. 20 27 CFR Parts 211 and 212	*Description:* Establishes a new completely denatured alcohol formula suitable for blending in motor fuels. [New] *Need:* A new completely denatured alcohol formula may be more suitable for blending with gasoline in the production of gasohol. *Legal basis:* 26 U.S.C. 5241. *Contact:* Norman P. Blake. *Status:* Temporary T.D. with N. under internal review. *Priority:* A.
Special Tax 27 CFR Parts 179, 194, 197, 245, 250, 251, and 252	*Description:* Implements adjustments in interest applicable to overpayments and underpayments of special tax, and conforms ATF regulations to changes made by the Internal Revenue Service on Form 11. [Rev.] *Need:* Regulations need to be revised to conform to Form 11, and to revise the interest rate statement. *Legal basis:* P. L. 93-625 and 26 U.S.C. 6621 and 7805. *Contact:* Steve Simon. *Status:* T.D. w/o N. under internal review; publication targeted for April 1980. *Priority:* B.
PROCEDURES & PRACTICES	
Seizures and Forfeitures; Carriers and Contraband Cigarettes 27 CFR Part 72	*Description:* This regulation would (1) implement section 111 of P. L. 95-410 (Customs Procedural Reform and Simplification Act of 1978) by increasing the appraised value of carriers from $2,500 to $10,000 and (2) implement P. L. 95-575 which provides that any contraband cigarettes involved in any violation of criminal law shall be subject to seizure and forfeiture. [Rev.] *Need:* To implement the provisions of P. L. 95-410 and P. L. 95-575. *Legal basis:* 26 U.S.C. 7805, 49 U.S.C. 788, and 18 U.S.C. 2346. *Contact:* Armida N. Stickney. *Status:* T.D. w/o N. published February 8, 1980.
Electronic Fund Transfers of Alcohol Excise Tax Payments 27 CFR Parts 19 [formerly 201], 70, 170, 240, 245, and 270 (26 CFR Parts 301 and 601)	*Description:* This regulation project would modify the present system of collecting alcohol excise taxes by return. The proposed system would require that certain alcohol taxpayers make their payments via electronic fund transfer directly to financial institutions. [Rev.] *Need:* This project would implement the cash management recommendations resulting from the President's Reorganization Project. *Legal basis:* 26 U.S.C. 5061(a), 5703(b), and 7805. *Contact:* Armida N. Stickney.

TITLE/CITATION	SUMMARY
	Status: Currently under internal study and development. NPRM expected April 1980. *Priority:* A.
ATF Procedural Rules 27 CFR Parts 70 and 71 (26 CFR Parts 301 and 601)	*Description:* Incorporates all of the procedural requirements which relate to ATF and which now appear in Internal Revenue Service Regulations, 26 CFR Parts 301 and 601, into ATF procedural regulations. [Rev.] *Need:* Eliminates a source of confusion and places all of the procedural regulations into Title 27: Alcohol, Tobacco Products and Firearms. *Legal basis:* 26 U.S.C. 7805. *Contact:* Steve Simon. *Status:* Temporary T.D. with N. under internal development. (Inquire contact person for additional information.) *Priority:* B.
Appeal Procedure for Claims for Abatement, Remission or Refund of Excise Taxes 27 CFR Part 71	*Description:* Establishes an appeal procedure whereby claims denied at the regional level may be appealed to the ATF Director. [New] *Need:* Current regulations do not provide for an appeal process for a claimant who feels that a claim was unfairly denied by the regional regulatory administrator (except in the case of newly discovered information). *Legal basis:* 26 U.S.C. 7805. *Contact:* John Ference. *Status:* Target date for publication of NPRM is April 1980. *Priority:* A.
Disclosure of Tax Return Information 27 CFR Part 71	*Description:* Proposed regulations would implement Title XII of P. L. 94-455, relating to disclosure of tax return information. [New] *Need:* Regulations may be needed to govern disclosure of tax return information, because of the changes made in this area by P. L. 94-455. *Legal basis:* 26 U.S.C. 6103. *Contact:* Armida N. Stickney. *Status:* Currently under internal study and development. *Priority:* A.
TOBACCO PRODUCTS	
Records Requirement for Cigarette Distributors 27 CFR Part 296, Subpart F	*Description:* Implements recordkeeping provisions of P. L. 95-575 in order to curtail trafficking of contraband cigarettes. [New] *Need:* Records would be useful in tracing the movement of cigarettes and making enforcement of this law easier. *Legal basis:* P. L. 95-578 (18 U.S.C. 2343). *Contact:* Tom Minton.

TITLE/CITATION	**SUMMARY**
	Status: NPRM published January 15, 1980 (45 FR 2855); comment period ends February 29, 1980. *Priority: A.*
Tobacco Excise Tax Acceleration Project 27 CFR Parts 270, 275, and 285	*Description:* This regulatory project would change the deferral and return periods for tobacco excise tax payments and would use electronic fund transfers for the payment of those excise taxes. [Rev.] *Need:* This project would implement the cash management recommendations resulting from the President's Reorganization Project. *Legal basis:* 26 U.S.C. 5061(a), 5703(b), and 7805. *Contact:* James A. Hunt. *Status:* Currently under internal study and development. (Inquire contact person for additional information on status.) *Priority:* A

PART II—REGULATIONS UNDER REVIEW

TITLE/CITATION	**SUMMARY**
ALCOHOL	
Wine; Standard of Identity for Cider 27 CFR Part 4	*Description:* Liberalizes standard of identity for cider by permitting cider to be made from a mixture of apples and pears. [Rev.] *Need:* Responds to a petition from an industry member. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* ANPRM published January 15, 1980 (45 FR 2855); comment period ends March 17, 1980. *Priority:* B.
Bottles per Shipping Case for Wine 27 CFR Part 4	*Description:* Eliminates the regulatory requirement that wine be packed with a specified number of bottles per case. [Res.] *Need:* The requirement to pack a specified number of bottles per case has resulted in numerous requests for exemptions due to various reasons. These exemptions have proven to be an administrative burden on ATF, and have hindered industry. Elimination of this requirement would remove an unnecessary restriction. *Legal basis:* 27 U.S.C. 205. *Contact:* James A. Hunt. *Status:* Revision under internal development; NPRM publication targeted for winter 1980. *Priority:* C.

TITLE/CITATION	SUMMARY
Labeling of Wine 27 CFR Part 4	*Description:* Amends labeling regulations to make bulkpacked wine for consumers conform to same labeling requirements as wine bottled in bottles. [Rev.] *Need:* Amendment would eliminate separate statements—"packed by" for containers over four liters, and "bottled by" for containers of four liters or less. This amendment would save money and standardize labels. *Legal basis:* 27 U.S.C. 205. *Contact:* James A. Hunt. *Status:* This regulation project is being incorporated into the project on "bottles per shipping case for wine".
The Fetal Alcohol Syndrome; A Public Awareness Campaign 27 CFR Parts 4, 5, and 7	*Description:* To consider the need for health warning labels or alternate programs. [New] *Contact:* Michael Dressler at 566-7591. *Status:* ANPRM published January 16, 1978 (43 FR 2186). Progress report published February 9, 1979 (44 FR 8288). An industry-Federal public awareness program has been formulated and is being monitored. Under P. L. 96-180, a report on proposed Government actions will be sent to the President and the Congress by June 1, 1980.
Advertising of Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description:* The advertising regulations under section 5(f) of the FAA Act are being reviewed for updating and possible revision. [Rev.] *Need:* Regulatory changes may be necessary to accommodate social and technological advances. *Legal basis:* 27 U.S.C. 205. *Contact:* Tom Minton. *Status:* ANPRM published on November 21, 1978 (43 FR 54266). (Inquire contact person for additional status information.) *Priority:* A.
Partial Ingredient Labeling for Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description:* A major revision of FAA labeling requirements for all domestic and imported beverages would require that alcoholic beverage labels list essential components, colorings, flavorings, and preservatives. [Rev.] *Need:* This proposal would assist consumers in identifying ingredients contained in alcoholic beverages. *Legal basis:* 27 U.S.C. 205. *Contact:* Norman P. Blake or Roger L. Bowling. *Status:* NPRM published February 2, 1979 (44 FR 6740); extension of comment period published June 4, 1979 (44 FR 32014); future action under consideration. (Inquire contact person for additional information on status.)

TITLE/CITATION	SUMMARY
	Priority: A. *Regulatory analysis:* A regulatory analysis is not required. However, ATF has decided that a regulatory analysis should be prepared and has such an analysis under development.
Labeling of Distilled Spirits and Wine 27 CFR Parts 5 and 7	*Description:* Simplifies the minimum type size for statements appearing on distilled spirits or wine labels. [Rev.] *Status:* This regulation project is being incorporporated into the project on "Partial Ingredient Labeling for alcoholic beverages.
Transfer of Volatile Fruit Flavor Concentrate between Manufacturing Plants 27 CFR 18.127	*Description:* Allows volatile fruit flavor concentrate of 15-24% alcohol content to be transferred between volatile fruit flavor manufacturing plants of same ownership. [Rev.] *Need:* Concentrates cannot be transferred between manufacturing plants unless reduced in alcohol content. This amendment would liberalize a current restriction on plant operations without jeopardizing revenues. *Legal basis:* 26 U.S.C. 5511. *Contact:* James A. Hunt. *Status:* An ATF ruling will be issued in lieu of a NPRM; publication targeted for September 1980. *Priority:* C.
Distilled Spirits Liquor Bottles 27 CFR Parts 19 [formerly 201], 173, 194, 250, and 251	*Description:* Eliminates registration of liquor bottle manufacturers with ATF. Liquor bottle indicia requirement would be amended to read "Liquor Bottle" and transferred to Parts 19, 250, and 251. Simplifies procedures for approval by ATF of distinctive liquor bottles. [Res. & Rev.] *Need:* Contains substantive rules which have not been significantly revised in the preceding six years. *Legal basis:* 26 U.S.C. 5301 and 7805. *Contact:* Robert L. White. *Status:* NPRM currently under internal development; publication targeted for April 1980. *Priority:* B.
Bonding Requirements 27 CFR Part 211	*Description:* Certain bond requirements would be decreased or eliminated. [Rev. or Res.] *Need:* A study of bonding requirements and previous bond defaults has shown that it may be possible to decrease or eliminate bond requirements for some taxpayers without jeopardy to Federal revenues. *Legal basis:* 26 U.S.C. 5272. *Contact:* Steve Simon. *Status:* NPRM publication targeted for June 1980. *Priority:* B.

TITLE/CITATION	SUMMARY
Elimination of Bonding Requirements for Experimental DSP/s 27 CFR 201.65	*Description:* Reduces bonding requirements on certain experimental DSP/s producing alcohol for fuel use. [Rev.] *Need:* Would eliminate an administrative burden for the Government and industry members. *Legal basis:* 26 U.S.C. 5312(b). *Contact:* Tom Minton. *Status:* NPRM under review within ATF. *Priority:* A.
Operational Losses of Distilled Spirits 27 CFR Part 19 [formerly 201]	*Description:* Increases the amount of allowable losses occurring during bottling operations at DSP/s. Current regulatory allowances are not providing adequate coverage of bottling losses. [Rev.] *Need:* To more closely align bottling losses with modern production methods. *Legal basis:* 26 U.S.C. 5008. *Contact:* Norman P. Blake. *Status:* T.D. ATF-61 was published October 1, 1979 (44 FR 56326), and effective for the year beginning July 1, 1978.
Distribution and Use of Denatured Alcohol and Rum 27 CFR Part 211	*Description:* A reissuance of regulations relating to the distribution and use of denatured alcohol by bonded dealers and users. Requirements will be liberalized and made more simple. [Rev.] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.
Distribution and Use of Tax Free Alcohol 27 CFR Part 213	*Description:* Reissuance of regulations relating to the distribution and use of tax free alcohol by qualified individuals. Requirements will be liberalized and made more simple. [Rev.] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.
Formulas for Denatured Alcohol and Rum 27 CFR Part 212	*Description:* This regulatory project will update, clarify, simplify, and reissue the regulations relating to formulas of denatured alcohol and rum. [Rev.] *Need:* Revision of 27 CFR Part 212 may be necessary to accommodate industry practices and changes in chemical terminology. *Legal basis:* 26 U.S.C. 5241. *Contact:* Steve Simon. *Status:* NPRM is under internal development; publication targeted for July 1980. *Priority:* C.
Wine; Public Use Forms 27 CFR Parts 231 and 240	*Description:* Eliminates several forms required to be kept by proprietors of wineries, and changes the information to be recorded to more accurately reflect operations at wineries. [Res.]

TITLE/CITATION	SUMMARY
	Need: The maintenance of these public use forms is unnecessary, and may be burdensome to some winery proprietors. *Legal basis:* 26 U.S.C. 5367. *Contact:* James A. Hunt. *Status:* T.D. published January 24, 1980 (45 FR 5694).
Wine; Recodification 27 CFR Parts 240, 231, and 170 Subpart Z	*Description:* Updates, simplifies and clarifies regulations relating to wine. Incorporates all regulations and outstanding ATF rulings relating to the production of wine into one CFR Part. [Rev.] *Need:* Present rules are at times redundant and confusing. *Legal basis:* 26 U.S.C. 7805. *Contact:* Tom Minton. *Status:* ANPRM published May 22, 1979 (44 FR 29691); NPRM publication targeted for July 1980. *Priority:* B.
Production of Beer 27 CFR Part 245	*Description:* A reissuance of regulations relating to the production of beer. Requirements would be simplified, and technological advances will be incorporated into the regulations. [Rev.] *Need:* Contains substantive rules which have not been significantly revised in the preceding six years, and which are complex and may be simplified and clarified. *Legal basis:* 26 U.S.C. 5051-5056, 26 U.S.C. 5401-5417. *Contact:* Charles N. Bacon. *Status:* Revision under internal development; NPRM publication targeted for October 1980. *Priority:* B.
Export of Bulk Beer 27 CFR Parts 245 and 252	*Description:* Allows the export of beer in bulk containers without payment of tax. [Res.] *Need:* Would eliminate an unnecessary burden on the brewing industry. *Legal basis:* 26 U.S.C. 5053. *Contact:* Tom Minton. *Status:* NPRM under review within ATF. *Priority:* C.
U. S. Customs Certification on Distilled Spirits from Puerto Rico 27 CFR Part 250	*Description:* This regulation changes the Customs certification on distilled spirits entering the United States from Puerto Rico. [Rev.] *Need:* The U.S. Customs Service does not consider Puerto Rican distilled spirits as an import; therefore, it may be necessary to revise the certification procedures for these spirits which are brought into the United States from Puerto Rico. *Legal basis:* 26 U.S.C. 7805. *Contact:* James A. Hunt.

TITLE/CITATION	SUMMARY
	Status: NPRM under internal development; publication targeted for February 1980. *Priority:* A.
Exportation of Wine, Distilled Spirits, and Malt Beverages 27 CFR Part 252	*Description:* This regulatory project will update, clarify, simplify, and reissue the regulations relating to the exportation of wine, distilled spirits, and malt beverages. [Rev.] *Need:* Present procedures for the certification of the export of alcoholic beverages are burdensome upon Government and industry, and do not work well in all cases. ATF has determined to study the export procedures and make necessary changes. *Legal basis:* 26 U.S.C. 7805. *Contact:* Steve Simon. *Status:* NPRM under internal development; publication targeted for June 1980. *Priority:* C.
Markings on Cases of Distilled Spirits for Export 27 CFR Part 252	*Description:* Deletes the regulatory requirement to mark packages or cases of wine, beer, or distilled spirits for export with the words "Without Payment of Tax" or "Drawback Claimed". [Rev.] *Need:* The requirement to mark cases of distilled spirits, wine, or beer for export is burdensome to proprietors of DSP/s, vintners, or brewers; and this requirement does not serve to protect the revenue. *Legal basis:* 26 U.S.C. 5206, 5368, 5412. *Contact:* Charles N. Bacon. *Status:* Revision under internal development. NPRM publication targeted for March 1980. *Priority:* A.
EXPLOSIVES	
Recodification and Redesignation of Explosives Regulations 27 CFR Part 181	*Description:* Recodification of explosives regulations which are to be updated, clarified, and simplified. It will further implement Title XI of the Organized Crime Control Act of 1970 and will adopt standards of safety and security. [Rev.] *Need:* The explosives regulations have not been significantly revised in the past six years. Many technological advances may have made these regulations obsolete. *Legal basis:* 18 U.S.C. 847. *Contact:* James A. Hunt. *Status:* Revision under internal development. *Priority:* A.
FIREARMS	
Definition of "engaged in the business" 27 CFR Part 178	*Description:* This regulation project attempts to define the term "engaged in the business". The law and regulations do not define this term. [Rev.] *Need:* Is the subject of criticism by the public and of request by the Congress for review. *Legal basis:* 18 U.S.C. 926.

TITLE/CITATION	SUMMARY
	Contact: Robert White. *Status:* ANPRM published December 19, 1979 (44 FR 75186); comment period ends March 18, 1980. *Priority:* A.
Sale of firearms at gun shows 27 CFR Part 178	*Description:* This regulation project would allow the sale of firearms at organized gun shows held in the same State as the licensee's premises. *Need:* Present regulations require licensees to conduct businesses only at the address shown on their license. ATF wishes to determine if licensees should be permitted to conduct business at gun shows. *Legal basis:* 18 U.S.C. 926. *Contact:* James A. Hunt. *Status:* Regulatory change is under consideration. *Priority:* A.
Suspension procedures for firearms licenses and explosives licenses or permits 27 CFR Parts 178 and 181	*Description:* This regulation would allow ATF to suspend the license or permit of Federal firearms licensees or of explosives licensees or permittees. *Need:* When adverse administrative actions are taken against the holder of a Federal firearms licensee or explosives licensee or permittee, current regulations provide only for the revocation of, or for the denial of, an application for a license or permit. Less severe administrative actions, such as suspension of the license or permit for a period of time are not now available. ATF wishes to determine if license or permit suspension should be used as an alternative adverse administrative action. *Legal basis:* 18 U.S.C. 847 and 926. *Contact:* Norman Blake. *Status:* Regulatory change is under consideration. *Priority:* A.
National Firearms Act 27 CFR Part 179	*Description:* These regulations would streamline the transfer procedures for title II weapons. [Rev.] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.
TOBACCO PRODUCTS	
Importation of Tobacco Products 27 CFR Part 275	*Description:* Eliminates U.S. Customs Service involvement on importation of Puerto Rican tobacco products. Eliminates direct ATF supervision of tobacco product shipment from Puerto Rico. [Res.] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.
Maunfacturer's Identification on Tobacco Products Packages 27 CFR Parts 270, 290, and 295	*Description:* Removes a regulatory requirement relating to labeling. Permits identification of the manufacturer of cigarettes or cigars by means of a code on the label. [Rev.]

TITLE/CITATION	SUMMARY
	Need: Special permission for manufacturer identification by code has been approved for use on some labels in certain cases, and no jeopardy to the revenue has been experienced. Consequently, all manufacturers may be permitted to use this method, on the condition that ATF be permitted to identify the codes to any member of the public making a request for such identification. *Legal basis:* 26 U.S.C. 5723. *Contact:* Steve Simon. *Status:* NPRM currently under internal development; publication targeted for May 1980. *Priority:* C.
Markings on Packages of Large Cigars 27 CFR Parts 270, 275, 290, and 295	*Description:* Removes the requirement to mark the wholesale price on packages of large cigars. This requirement was added by P. L. 94-455. [Res.] *Need:* The requirement has not been invoked by those affected or by ATF for more than one year. *Legal basis:* P. L. 94-455 and 26 U.S.C. 7805. *Contact:* Steve Simon. *Status:* Publication of T.D. w/o N. targeted for March 1980. *Priority:* C.
Tobacco Products Transferred to Export Warehouses 27 CFR Parts 275 and 290	*Description:* Proposed regulations would implement P. L. 95-455, relating to transfer of liability for tobacco taxes and to exemptions from tobacco taxes. [New] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.
Exportation of Tobacco Products 27 CFR Part 290	*Description:* This regulatory project will update, clarify, simplify, and reissue the regulations relating to the exportation of tobacco products. [Rev.] *Status:* This project is suspended due to manpower allocation to regulation projects with greater public impact.

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
ANPRM	Advance notice of proposed rulemaking
ATF	Bureau of Alcohol, Tobacco and Firearms
CFR	Code of Federal Regulations
DSP	Distilled spirits plant
FR	Federal Register
FAA Act	Federal Alcohol Administration Act
FDA	Food and Drug Administration
New	New regulation is proposed
NPRM	Notice of proposed rulemaking
P. L.	Public Law
Res.	Rescission of an existing regulation
Rev.	Revision or amendment of an existing regulation
T.D.	Treasury decision
T.D. with N.	[Temporary] Treasury decision with notice
T.D. w/o N.	Treasury decision without notice
Treasury	Department of the Treasury

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ALCOHOL, TOBACCO AND FIREARMS

No. 1980-2

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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

Department of the Treasury
Bureau of Alcohol, Tobacco and Firearms

T70.7:

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NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—Alcohol

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

T.D. ATF-68

27 CFR Part 13

Optional Method for Determination of Proof for Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). This temporary rule provides an optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.

EFFECTIVE DATE: The effective date of the temporary regulations is April 22, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, Coordinator, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION: This temporary rule adds temporary regulations in 27 CFR Part 13 to provide for an optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters. The temporary regulations as added by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, 44 FR 71612 (1979), a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to this temporary regulation.

BACKGROUND

Prior to the implementation of the Distilled Spirits Tax Revision Act of 1979 on January 1, 1980, 27 CFR Part 186, Gauging Manual, governed the gauging of spirits. Section 186.31 provided methods for determination of proof based on the solids content of spirits. The methods for determination of proof based on solids content were generally divided between: (1) Those spirits on which the proof was determined in bond; and (2) Those spirits on which the proof was determined after removal from bond on tax determination.

With the passage of the Distilled Spirits Tax Revision Act of 1979, an all-in-bond system was established. Spirits were no longer processed and bottled after tax determination. Under the all-in-bond system, all spirits are processed and bottled in bond. As a result, the provisions in 27 CFR Part 186 relating to the methods for determination of proof after tax determination were obsolete. Therefore, the Bureau's temporary regulations, T.D. ATF-62 (44 FR 71612), eliminated this method for determination of proof after tax determination.

Under the temporary regulations issued in T.D. ATF-62, the Gauging Manual was recodified as 27 CFR Part 13. Under 27 CFR 13.31, the proof of spirits is determined by a standard method, adopted from recodified Part 186, depending upon the solids content of the spirits. If spirits contain solids of 400 milligrams or less per 100 milliliters at gauge proof, the proof of spirits is determined by the use of a hydrometer and thermometer. This gauging method determines the apparent proof of the spirits. If spirits contain solids in excess of 400 milligrams but not in excess of 600 milligrams per 100 milliliters at gauge proof, there is added to the apparent proof the proof obscuration. This establishes the true proof of the spirits. If spirits contain solids in excess of 600 milligrams per 100 milliliters at gauge proof, the proof is determined on the basis of true proof by: (1) The use of a hydrometer and thermometer after the spirits have been distilled in a small laboratory still and restored to the original volume and temperature by the addition of water; or (2) A recognized laboratory method which is equal or superior in accuracy to the distillation method.

NEW PROVISIONS

This temporary rule adds a new Subpart F—Transitional Gauging Procedures, to provide an optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters. Under 27 CFR 13.71 in Subpart F, the apparent proof of spirits containing solids of 400 milligrams or less per 100 milliliters shall be determined by the use of a hydrometer and thermometer as presently required in 27 CFR 13.31. However, 27 CFR 13.71 allows proprietors at their option to add to the proof so determined on such spirits the obscuration as determined in 27 CFR 13.32. This allows proprietors to determine the true proof of such spirits, if they so desire. Additionally, under 27 CFR 13.72 in Subpart F, any proprietor exercising this option in proofing spirits containing solids of 400 milligrams or less per 100 milliliters, shall record the obscuration so determined on the record of gauge required by 27 CFR Part 19.

Section 13.71 incorporates some of the provisions in the previous regulations in 27 CFR Part 186 for proofing of spirits after tax determination. Previous requirements allowed certain rectified spirits to use obscuration. However, this privilege was not extended to spirits to which had not been added materials containing solids, in a process of rectification. Section 13.71 allows proprietors to use an obscuration for all spirits containing solids of 400 milligrams or less per 100 milliliters including spirits such as bourbon whiskey, rum, brandy, blended whiskey, etc.

PROPOSED REVISIONS

The new Subpart F—Transitional Gauging Procedures, is a temporary measure until final rules are issued. The Bureau was petitioned to consider modification of gauging procedures prescribed in 27 CFR Part 13 in order to relieve the burden of added operating expenses which accrued as a result of the inability to take into account obscuration on certain products. In changing to the all-in-bond method of operation and making all gauges of distilled spirits in bond, proprietors could no longer take into account obscuration of certain products which necessitated the use of additional spirits in these products. Although the temporary regulations, 27 CFR Part 13, simplified and made consistent the gauges for all products, inequities may have resulted which require additional, unexpected costs for certain products. The Bureau will study the gauging of spirits and use of obscuration to determine the most cost efficient method of gauging spirits which will at the same time protect the revenue. Factors to be considered are the times when true proof gauges must be made, whether true proof should be determined on all products or whether cut-off points should be established for solids content below which true proof would not be determined. During the interim this temporary rule gives proprietors the option to use obscuration to determine the true proof of spirits containing solids of 400 milligrams or less per 100 milliliters.

DRAFTING INFORMATION

The principal author of this document is Edward J. Sheehan of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing this document, both on matters of substance and style.

EFFECTIVE DATE

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d) is impracticable and not in the public interest because revisions in the gauging manual, 27 CFR Part 13, have created inequities which have imposed additional, unexpected costs upon certain products and immediate action is necessary to rectify the situation while the Bureau studies the appropriate gauging methods.

Accordingly, this Treasury decision becomes effective on April 22, 1980.

AUTHORITY AND ISSUANCE

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

Paragraph 1. The table of sections for Part 13 is amended to reflect the addition of Subpart F—Transitional Gauging Procedures, immediately following Subpart E—Prescribed Tables. As amended, the table of sections reads as follows:

PART 13—GAUGING MANUAL

* * * * *

Subpart F—Transitional Gauging Procedures

Sec.
13.71 Optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.
13.72 Recording obscuration by proprietors using the optional method for determination of proof.

Authority: 26 U.S.C. 7805 (68A Stat. 917, as amended).

Par. 2. Subpart F—Transitional Gauging Procedures, is added immediately following the regulations in Subpart E—Prescribed Tables. As added, Subpart F reads as follows:

Subpart F—Transitional Gauging Procedures

§ 13.71 Optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters.

The proof of spirits shall be determined to the nearest tenth degree which shall be the proof used in determining the proof gallons and all fractional parts thereof to the nearest tenth proof gallon. The proof of spirits containing solids of 400 milligrams or less per 100 milliliters shall be determined by the use of a hydrometer and thermometer in accordance with the provisions of § 13.23. However, notwithstanding, the provisions of § 13.31, the proprietor may, at his option, add to the proof so determined the obscuration determined as prescribed in § 13.32.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1362, as amended (26 U.S.C. 5204, 5211))

§ 13.72 Recording obscuration by proprietors using the optional method for determination of proof.

Any proprietor using the optional method for determination of proof for spirits containing solids of 400 milligrams or less per 100 milliliters as provided in § 13.71 shall record the obscuration so determined on the record of gauge required by 27 CFR Part 19.

(Sec. 201, Pub. L. 96-39, 93 Stat. 284 (26 U.S.C. 5207))

Signed: March 26, 1980.

Miles N. Keathley,
Acting Director.

Approved: April 14, 1980.

Richard J. Davis,
Assistant Secretary
(*Enforcement and*
Operations).

(Filed by the Office of the Federal Register on April 17, 1980, 4:40 p.m., and published in the Federal Register for April 2[illegible], 1980, 45 F.R. 26956)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-69

27 CFR Part 19

Distilled Spirits Plants—Reduced Bond Penal Sums for Limited Distilled Spirits Operations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). This temporary rule provides for reduced operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations.

EFFECTIVE DATE: The effective date of this temporary regulation is May 21, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION: This temporary rule revises 27 CFR 19.245 to provide for reduced maximum operations bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operatons (i.e., storage operations or storage and processing operations). Section 19.245 was published in its entirety in the Federal Register (44 FR 71612) as both a temporary rule, T.D. ATF-62, and a notice of proposed rulemaking for final regulations, Notice No. 329. This temporary regulation as revised by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to this revised temporary regulation.

NEW PROVISION

Prior to January 1, 1980, 27 CFR 201.211(b)(2) and (3) provided for reduced maximum bond penal sums for distilled spirits plant proprietors conducting certain limited distilled spirits operations. However, under current temporary regulations, § 19.245 provides that the maximum operations bond penal sums for storage operations and for storage and processing operations are $200,000 and $250,000, respectively, regardless of the size of operations. This Treasury decision revises § 19.245(a)(1)(ii) and (v) by providing a lower maximum operations bond penal sum of $50,000 for limited storage operations or limited storage and processing operations. This regulation should provide relief for small distilled spirits plant proprietors who may have difficulty in obtaining operations bonds at the higher penal sums previously required by § 19.245.

DRAFTING INFORMATION

The principal author of this document is Edward J. Sheehan of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing this document, both on matters of substance and style.

EFFECTIVE DATE

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553 (b) and in compliance with the effective date limitation in 5 U.S.C. 553 (d) is impracticable and not in the public interest because revisions in the bonding provisions, 27 CFR, Part 19, Subpart H, have created unintended hardships and inequities for small distilled spirits plants conducting certain limited distilled spirits operations. The Bureau has been advised that such plants have been unable to obtain bonds at the maximum penal sum and thereby have been seriously hampered in conducting the same business engaged in prior to January 1, 1980, and unless granted relief substantial business damage will result. Immediate action is necessary to rectify the inequities and prevent substantial harm to such plants. This amendment reestablishes reduced maximum operations bond penal sums to ease qualification requirements for proprietors of small distilled spirits plants conducting certain limited distilled spirits operations who have difficulty in obtaining operations bonds at the higher penal sums.

Accordingly, this Treasury decision becomes effective on May 21, 1980.

AUTHORITY AND ISSUANCE

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Section 19.245 is amended to read as follows:

§ 19.245 Bonds and penal sums of bonds.

The bonds, and the penal sums thereof, required by this subpart, are as follows:

Penal Sum

Type of bond	Basis	Minimum	Maximum
(a) Operations bond:			
(1) One plant bond—			
(i) Distiller	The amount of tax on spirits produced during a period of 15 days.	$5,000	$100,000
(ii) Warehouseman:			
(A) General	The amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises.	5,000	200,000
(B) Limited to storage of not over 500 packages, and to a total of not over 50,000 proof gallons.	do	5,000	50,000
(iii) Distiller and warehouseman.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits and wines deposited in, stored on, and in transit to bonded premises.	10,000	200,000
(iv) Distiller and processor:	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	200,000
(v) Warehouseman and processor:			
(A) General	The amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	10,000	250,000
(B) Limited to storage of not over 500 packages, and to a total of not over 50,000 proof gallons, and processing of spirits so stored.	do	10,000	50,000
(vi) Distiller, warehouseman, and processor.	The amount of tax on spirits produced during a period of 15 days, and the amount of tax on spirits (including denatured spirits), articles, and wines deposited in, stored on, and in transit to bonded premises.	15,000	250,000
(2) Adjacent bonded wine cellars—			
(i) Distiller and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(i) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	6,000	150,000

Penal Sum—Continued

Type of bond	Basis	Minimum	Maximum
(ii) Distiller, warehouseman and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(iii) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iii) Distiller, processor and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(iv) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	11,000	250,000
(iv) Distiller, warehouseman, processor and bonded wine cellar.	The sum of the amount of tax calculated in (a)(1)(vi) and with respect to bonded wine cellar operations, the amount of tax on wines and wine spirits possessed and in transit.	16,000	300,000
(b) Area operations bond:	The penal sum shall be calculated in accordance with the following table:		

Total penal sums as determined under (a).	Requirements for penal sum of area operations bond.
Not over $300,000	100 percent.
Over $300,000 but not over $600,000.	$300,000 plus 70 percent of excess over $300,000.
Over $600,000 but not over $1,000,000.	$510,000 plus 50 percent of excess over $600,000.
Over $1,000,000 but not over $2,000,000.	$710,000 plus 35 percent of excess over $1,000,000.
Over $2,000,000	$1,060,000 plus 25 percent of excess over $2,000,000.

(c) Withdrawal bond:			
(1) One plant qualified for distilled spirits operations.	The amount of tax which, at any one time, is chargeable against such bond but has not been paid.	1,000	1,000,000
(2) Two or more plants in a region qualified for distilled spirits operations.	Sum of the penal sums for each plant calculated in (c)(1) of this section.	(1)	(2)
(d) Unit bond:			
(1) Both operations at a distilled spirits plant (and any adjacent bonded wine cellar) and withdrawals from the bonded premises of the same distilled spirits plant.	Total penal sums of (a) and (c)(1) of this section.	6,000	1,300,000

Penal Sum—Continued

Type of bond	Basis	Minimum	Maximum
(2) Both operations at two or more distilled spirits plants (and any adjacent bonded wine cellar) within the same region and withdrawals from the bonded premises of the same distilled spirits plants.	Total penal sums of (b) and (c)(2) of this section in lieu of which given.	(3)	(4)

[1] Sum of the minimum penal sums required for each plant covered by the bond.

[2] Sum of the maximum penal sums required for each plant covered by the bond (The maximum penal sum for one plant is $1,000,000).

[3] Sum of the minimum penal sums for operations and withdrawal bonds required for each plant covered by the bond.

[4] Sum of the maximum penal sums for area operations bonds and withdrawal bonds required for the plants covered by the unit bond.

(Sec. 805(c), Pub. L. 96-39, 93 Stat. 276 (26 U.S.C. 5173))

Signed: March 10, 1980.
G. R. Dickerson,
Director.

Approved: April 22, 1980.
Richard J. Davis
Assistant Secretary
(Enforcement and
Operations).

(Filed by the Office of the Federal Register on May 20, 1980, 8:45 a.m., and published in the Federal Register for May 21, 1980, 45 F.R. 33976)

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-67

27 CFR Parts 211 and 212

New and Revised Formulas, Completely Denatured Alcohol Formula No. 20

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Temporary rule, Treasury decision.

SUMMARY: This temporary rule amends the regulations relating to denatured alcohol and rum. The amendments establish a new formula for completely denatured alcohol and authorize the use of automotive-gasoline as a denaturant. The Bureau of Alcohol, Tobacco and Firearms will issue final regulations only after careful consideration of the comments received on these temporary regulations.

EFFECTIVE DATE OF TEMPORARY REGULATIONS: March 27, 1980.

FOR FURTHER INFORMATION CONTACT: John Jarowski or Norman Blake, Specialists, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background Information

This rule is in response to suggestions from members of the alcohol fuels industry .The increasing interest in fuel uses of alcohol and in reducing the cost of alcohol fuels have also led to this amendment.

Although denatured alcohol manufactured according to existing formulas has been used for blending in motor fuels, its use presents problems. The denaturants required for existisg completely denatured alcohol (CDA) formulas increase the cost of blended alcohol fuels. While specially denatured alcohol (SDA) Formula No. 28-A is denatured with gasoline only, users of SDA are required to qualify under the permit system provided for in Part 211. Administrative costs of operating under the permit system would increase the costs of blended alcohol fuels and be passed on to consumers.

This rule authorizes a new formula for completely denatured alcohol, CDA Formula No. 20 which consists of 5 gallons of gasoline, automotive-gasoline, kerosene, or deodorized kerosene to every 100 gallons of at least 190° proof alcohol. CDA Formula No. 20 is restricted to use for fuel purposes.

Members of the alcohol fuels industry have pointed out that the specification for gasoline in Part 212 did not allow for the use of currently available automotive-gasoline. The amended regulations allow for the use of any automotive-gasoline which meets current American Society for Testing and Materials (ASTM) specifications.

CHANGES—PART 211

Two sections of Part 211 are affected by this Treasury decision. Section 211.111 has been amended to indicate that certain CDA formulas are restricted as to use. The change makes this section compatible with the restriction of CDA Formula No. 20 to fuel use and allows for any other formulas which may in the future be restricted as to use. Section 211.170 has been amended to allow for the use of automotive-gasoline as an alternative ingredient in the manufacture of proprietary solvents.

CHANGES—PART 212

The addition of CDA Formula No. 20 and the specification of automotive-gasoline as a new denaturant are the major changes to this part. Sections 212.13 and 212.80a are created and add the new CDA formula and the new automotive-gasoline denaturant specification. Other sections affected by the addition of alternate denaturants are §§ 212.38 (SDA Formula 28-A), 212.11 (CDA Formula 18), and 212.12 (CDA Formula 19). Section 212.110 is amended to reflect gasoline, automotive (automotive-gasoline) as a new denaturant authorized for denaturing spirits. In addition, the list accompanying § 212.110 is amended to reflect CDA 20 as a formula applying to the denaturants kerosene, kerosene (deodorized), gasoline and gasoline, automotive (automotive-gasoline).

DRAFTING INFORMATION

The principal authors of this document are John Jarowski and Norman Blake, Specialists, Bureau of Alcohol, Tobacco and Firearms. However, other officials from the Bureau and from the Treasury Department participated in developing this Treasury decision.

EFFECTIVE DATE

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553 (b) and in compliance with the effective date limitation in 5 U.S.C. 553 (d) is impracticable and not in the public interest since absence of this rule is creating a serious obstacle to the commercial production of alcohol fuel, inconsistent with the intent of the Energy Tax Act of 1978 (Pub. L. 95-618, 92 Stat. 3174) to encourage the expeditious production of alcohol fuels. Accordingly, this Treasury decision becomes effective on March 27, 1980.

Authority and Issuance

These regulations are issued under the authority of 26 U.S.C. 7805 (68A Stat. 917 as amended).

In view of the foregoing 27 CFR Parts 211 and 212 are amended as follows:

PART 211—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

1. Section 211.111 is revised to provide for completely denatured alcohol formulas which are restricted as to use. As revised, § 211.111 reads as follows:

§ 211.111 General.

Formulas for completely denatured alcohol are given in Part 212 of this chapter. If the formula places no restriction on use, the completely denatured alcohol may be sold or used for any lawful purpose. Completely denatured alcohol may be used (a) in the manufacture of definite chemical substances where such alcohol is changed into some other chemical substance and does not appear in the finished product; (b) in the arts and industries (except in the manufacture of preparations or products for internal human use or consumption where any of such alcohol or of the denaturants used in such alcohol may remain in the finished product); and (c) for fuel, light, and power. Use of completely denatured alcohol in the arts and industries includes, but is not limited to, the manufacture of cleaning fluids, detergents, proprietary antifreeze solutions, thinners, lacquers, and brake fluids. Persons distributing and using (but not recovering for reuse) completely denatured alcohol are not required to obtain a permit or to file bond under this part. Persons recovering completely denatured alcohol for reuse shall procure an industrial use permit in accordance with Subpart D of this part and file bond in accordance with Subpart E of this part. Containers of products manufactured with completely denatured alcohol, such as proprietary antifreeze preparations, solvents, thinners, and lacquers, shall not be branded as completely denatured alcohol nor shall any such product be advertised, shipped, sold, or offered for sale as completely denatured alcohol.

(72 Stat. 1356, 1362, 1369, 1372, 1373; 26 U.S.C. 5201, 5214, 5241, 5273, 5275)

2. Section 211.170 is amended to include automotive-gasoline as an alternate ingredient in each formulation. As revised, § 211.170 reads as follows:

§ 211.17 Manufacture of proprietary solvents.

All articles coming under the general classification of proprietary solvents shall be manufactured with specially denatured alcohol Formula No. 1. The formulations shall be as follows, except as may otherwise be authorized by the Director:

(*1*) *Formulation No. I—Gallons*

Specially denatured alcohol formula No. 1—100

Ethyl acetate—5

Gasoline, automotive-gasoline or rubber hydrocarbon solvent—1

(*2*) *Formulation No. II—Gallons*

Specially denatured alcohol formula No. 1—100

Denaturing grade wood alcohol—2

Ethyl acetate--1

Gasoline, automotive-gasoline or rubber hydrocarbon solvent—1

(3) *Formulation No. III—Gallons*

Specially denatured alcohol formula No. 1—100
Methyl isobutyl ketone—1
Ethyl acetate—1
Gasoline, automotive-gasoline or rubber hydrocarbon solvent—1

(4) *Formulation No. IV—Gallons*

Specially denatured alcohol formula No. 1—100
Methyl isobutyl ketone—1
tert-butyl alcohol—2
Gasoline, automotive-gasoline or rubber hydrocarbon solvent—1

(5) *Formulation No. V—Gallons*

Specially denatured alcohol formula No. 1—100
Methyl isobutyl ketone—1
Secondary butyl alcohol—2
Gasoline, automotive-gasoline or rubber hydrocarbon solvent—1

PART 212—FORMULAS FOR DENATURED ALCOHOL AND RUM

3. The table of sections of 27 CFR Part 212 is amended to read as follows:

* * * * *

Subpart C—Completely Denatured Alcohol Formulas

* * * * *

212.13 Formula No. 20.

* * * * *

Subpart E—Specifications for Denaturants

* * * * *

212.80a Gasoline, automotive (automotive-gasoline).

* * * * *

4. Section 212.11 is amended to provide for the use of automotive-gasoline as an alternate denaturant. As revised, § 212.11 reads as follows:

§ 212.11 Formula No. 18.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:

2.50 gallons of methyl isobutyl ketone;

0.125 gallon of pyronate or a compound similar thereto;

0.50 gallon of acetaldol (b-hydroxybytyraldehyde); and

1.00 gallon of either kerosene, deodorized kerosene, gasoline or automotive-gasoline.

5. Section 212.12 is amended to provide for the use of automotive-gasoline as an alternate denaturant. As revised, § 212.12 reads as follows:

§ 212.12 Formula No. 19.

To every 100 gallons of ethyl alcohol of not less than 160° proof add:

4.0 gallons of methyl isobutyl ketone; and

1.0 gallon of either kerosene, deodorized kerosene, gasoline or automotive-gasoline.

6. A new § 212.13 is added to establish Formula No. 20 and to restrict it to fuel use. As added, § 212.13 reads as follows:

§ 212.13 Formula No. 20.

(a) *Formula.* To every 100 gallons of ethyl alcohol of not less than 190° proof add:

5.0 gallons of gasoline, automotive-gasoline, kerosene or deodorized kerosene.

(b) *Authorized use.* Restricted to fuel use, comparable to specially denatured alcohol "Use Code No." 611, 612, 613, 620, and 630.

7. Section 212.38 is amended to provide for the use of automotive-gasoline as an alternate denaturant. As amended § 212.38 reads as follows:

§ 212.38 Formula No. 28-A.

(a) *Formula.* To every 100 gallons of alcohol add:

One gallon of gasoline or automotive-gasoline.

* * * * *

8. A new § 212.80a is added immediately following § 212.80. The new section provides specifications for automotive-gasoline as a denaturant. As added, § 212.80a reads as follows:

§ 212.80a Gasoline, automotive (automotive-gasoline).

Conforms to specifications as established by the American Society for Testing and Materials (ASTM) in its current revision of ASTM Specification D 439. Any of the "seasonal and geographical" volatility classes are considered suitable as a denaturant.

9. The listing of authorized denaturants in § 212.110 is amended by inserting a line for "Gasoline, automotive" and amending the lines for "Gasoline", "Kerosene", and "Kerosene (deodorized)". As amended, § 212.110 reads as follows:

§ 212.110 Listing of denaturants authorized for denatured spirits.

* * * * *

Gasoline—C.D.A. 18; 19; 20; S.D.A. 28-A

Gasoline, automotive (automotive-gasoline)—C.D.A. 18; 19; 20; S.D.A. 28-A

* * * * *

Kerosene—C.D.A. 18; 19; 20

Kerosene (deodorized)—C.D.A. 18; 19; 20

* * * * *

§ 212.15 [Amended]

10. The listing of weights and specific gravities of specially denatured alcohol in § 212.115 is amended by adding footnote "1" following SDA Formula No. 28-A. This footnote citation is to advise that alternate denaturants are permitted and the weight per gallon is based on that of gasoline.

Signed: February 27, 1980.

G. R. Dickerson,
Director.

Approved: March 18, 1980.

Richard J. Davis,
Assistant Secretary,
Enforcement and
Operations.

(Filed by the Office of the Federal Register on March 26, 1980, 8:45 a.m., and published in the Federal Register for March 27, 1980, 45 F.R. 20420)

Bureau Rulings PART II

Subpart A—Alcohol

27 CFR 7.29: PROHIBITED STATEMENTS

False and misleading statements in the labeling and advertising of malt beverages are prohibited. ATF Rul. 79-17 is modified and superseded.

ATF Rul. 80-3

ATF Ruling 79-17 dealt with statements of caloric and carbohydrate content in the labeling and advertising of malt beverages. Specifically, ATF Ruling 79-17 held that the Bureau will not sanction any caloric or carbohydrate references on labels that do not contain a statement of average analysis. Also, ATF Ruling 79-17 required an average analysis statement on all labels for malt beverages using the word "light" (or "lite") as part of the brand or product name. In addition, previously approved certificates of label approval for malt beverages which did not comply with the ruling were allowed until December 31, 1979.

The Bureau was asked to reconsider its position with respect to an average analysis statement on all labels for malt beverages using the word "light" or "lite" as part of the brand and product name. Numerous malt beverages utilize the words "light" or "lite" as a color connotation. The Bureau also received a number of inquiries relating to average analysis statements on quarts or larger containers of malt beverages.

The Bureau has reconsidered its position with respect to requiring an average analysis statement on labels for malt beverages using the word "light" or "lite" as part of the brand or product name. We have decided to thoroughly air the issue in a rulemaking proceeding. Further, the Bureau recommends that the average analysis shown on labels should be for the amount of malt beverage in the labeled container. If the container is more than 12 fl. oz., the analyzed amount should be stated per container size or per serving size, e. g. 12 fl. oz. No average analysis is required to appear on kegs. Additionally, the use-up period for previously approved certificates of label approval has been lengthened to August 1, 1980.

Accordingly, Ruling 79-17 is restated below in its entirety with the modifications noted above.

The Bureau of Alcohol, Tobacco and Firearms has been asked to review its present position regarding statements of caloric and carbohydrate content in the labeling and advertising of malt beverages.

CALORIC and CARBOHYDRATE CONTENT

Sections 5(e) and 5(f) of the Federal Alcohol Adminstration Act, implemented by regulations in 27 CFR, Part 7 for malt beverages, relate to prohibited statements and practices in labeling or advertising. In general, the FAA Act and implementing regulations prohibit the use of certain statements on labels of malt beverages introduced into interstate commerce, and the use of such statements in advertisements in interstate commerce, or advertisements that are calculated to induce sales in interstate commerce, if the laws of the State into which the malt beverages are to be shipped impose similar requirements.

Prohibited statements include those that are untrue in any particular; that, irrespective of falsity, tend to create a misleading impression; that are disparaging of a competitor's product; or that imply that the use of any malt beverage has curative or therapeutic effects.

The Bureau has held (ATF Ruling 76-1, ATF C.B. 1976, 82) that labels and advertising for malt beverages could not state or imply the presence of calories unless such reference was specified either as part of an average analysis or in comparison with the brewer's regular product. ATF Ruling 76-1 also held that any labeling or advertising references relating to the carbohydrate content of these products could only appear as a part of a statement of average analysis.

In reviewing its position, the Bureau has found that specifying the caloric content of the product in comparison to the brewer's regular product is no longer essential to give the consumer a point of reference. Also, the Bureau has determined that carbohydrate references should be handled in the same manner as caloric references.

Held, caloric and carbohydrate representations made without qualification in the labeling and advertising of malt beverages are considered to be misleading and contrary to the provisions of 27 CFR 7.29(e) and 7.54 (e), since they create the impression that the product has value as a dietary aid.

The Bureau will not sanction any caloric or carbohydrate references on labels that do not contain a statement of average analysis.

The average analysis shown on labels may be stated per container size if the container is 12 fl. oz. or less. For example, the average analysis for a 7 ounce container may read:

PER 7 FL. OZ.—AVERAGE ANALYSIS

Calories	56
Carbohydrates	1.6 grams
Protein	0.5 grams
Fat	0.0 grams

If the container is more than 12 fl. oz. the analyzed amount may be stated per container size or per serving size, e. g. "per 12 fl. oz." For example, the average analysis for a quart container may read:

PER 12 FL. OZ.—AVERAGE ANALYSIS

Calories	96
Carbohydrates	2.8 grams
Protein	0.9 grams
Fat	0.0 grams

All statements of average analysis should include container size or serving size. No average analysis is required to appear on kegs. The average analysis statement will be optional in advertising.

In addition to the above, but not in lieu of the statement of average analysis on labels, the Bureau will permit statements of caloric or carbohydrate content such as "contains 96 calories per 12 ozs." on any label and in any advertising of malt beverage products. The serving size, e.g. "per 12 fl. oz.," must be specified for any such caloric or carbohydrate statement.

Held further, specific caloric and carbohydrate comparisons may be made in advertising between a malt beverage labeled in accordance with this ruling and an equal volume of a competitor's product labeled in accordance with this ruling. The comparison may not be either misleading or disparaging of a competitor's product. Additionally, a brewer may compare, on labels and in advertising, the calories and carbohydrates of a malt beverage he has produced and labeled in accordance with this ruling and an equal volume of his regular beer.

Examples of allowable comparisons are as follows: "96 calories per 12 ozs. —48 calories (or ⅓) less than *competitor's name* Light Beer"; "2.8 grams carbohydrates per 12 ozs.—1.4 grams (or ⅓) less than *competitor's name* Light Beer"; "*Brand name* contains 96 calories per 12 ozs. while *competitor's name* Light Beer contains 106 calories per 12 ozs."; "*Brand name* contains 2.6 grams carbohydrates per 12 ozs. while *competitor's name* Light Beer contains 3.0 grams per 12 ozs."; "90 calories per 12 ozs.—45 calories (or ⅓) less than our regular beer"; "2.6 grams carbohydrates per 12 oz.—1.3 grams (or ⅓) less than our regular beer."

Previously approved certificates of label approval for malt beverages which bear caloric or carbohydrate representations but not statements of average analysis may be used until August 1, 1980. At that time the certificates must be returned for cancellation. A reasonable amount of time will be allowed for the preparation of substitute advertising copy to conform with the requirements of this ruling. However, the transition should be effected as expeditiously as possible.

TOLERANCES

The Bureau has determined that tolerance ranges are required with respect to labeled statements of caloric, carbohydrate, protein, and fat contents for malt beverages. The intent of these tolerances is to provide for normal production and analytical variables while continuing to ensure that the labeling is not misleading to the consumer.

Held, the statement of caloric content on labels for malt beverages will be considered acceptable as long as the caloric content, as determined by ATF analysis, is within the tolerance +5 and —10 calories of the labeled caloric content. For example, a label showing 96 calories will be acceptable if ATF analysis of the product shows a caloric content between 86 and 101 calories.

Held further, the statements of carbohydrate and fat contents on labels for malt beverages will be considered acceptable as long as the carbohydrate and fat contents, as determined by ATF analysis, are within a reasonable range below the labeled amount but, in no case, are more than 20% above the labeled amount. For example, a label showing 4.0 grams carbohydrates will be acceptable if ATF analysis of the product shows a carbohydrate content which is under 4.0 grams (within good manufacturing practice limitations) but not more than 4.8 grams.

Held further, the statement of protein content on labels for malt beverages will be considered acceptable as long as the protein content, as determined by ATF analysis, is within a reasonable range above the labeled amount but, in no case, is less than 80% of the labeled amount. For example, a label showing 1.0 gram protein will be acceptable if ATF analysis of the product shows a protein content which is more than 1.0 gram (within good manufacturing practice limitations) but no less than 0.8 gram.

Certificates of label approval which are not in compliance with this ruling must be returned for cancellation after August 1, 1980.

ATF Ruling 79-17 is modified and superseded.

27 CFR 19.62, 250.331, 251.221: ALTERNATE METHODS OR PROCEDURES; AND EMERGENCY VARIATIONS FROM REQUIREMENTS

(Also 19.634, 250.314, 251.204)

Bottlers and importers desiring approval of distinctive liquor bottles will not, unless specifically requested, have to submit a specimen bottle or an authentic model. Acceptable, alternate procedural information requirements are provided.

ATF Rul. 80-4

The Bureau has been requested to allow the approval of distinctive liquor bottles as part of the label approval process, and thereby reduce costs to permittees.

Regulations in 27 CFR 19.62, 250.331, and 251.221 allow the Director to approve alternate methods or procedures subject to stated conditions, when he finds that:

1. Good cause has been shown for the use of the alternate method or procedure;
2. The alternate method or procedure is within the purpose of, and consistent with the effect intended by the specifically prescribed method or procedure, and affords equivalent security to the revenue; and
3. The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of these parts.

The regulations appearing at 27 CFR 19.634, 250.314, and 251.204, require submission of a letter application accompanied by an actual bottle or an authentic model if the bottle has not previously been declared distinctive.

The Bureau finds that the applicant may, as an alternative, certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on Forms 1649 in lieu of submitting the actual bottle or model required by regulations. In addition, the Bureau has determined that affixing a readily legible photograph (both front and back of the bottle) to the front of each copy of Form 1649, along with the label(s) to be used on the bottle, will be sufficient in most instances to allow the approval of distinctive liquor bottles as part of the label approval process.

Held, bottlers and importers desiring approval of distinctive liquor bottles without submitting an actual specimen bottle or an authentic model (unless specifically requested) may, as an alternative, certify as to the total capacity of a representative sample bottle before closure (expressed in milliliters) on Forms 1649, accompanied by both the labels to be used with the bottle, and a readily legible photograph (both front and back) of the bottle, affixed to the front of the forms.

27 CFR 19.634: DISTINCTIVE LIQUOR BOTTLES

Alternate procedural requirements are provided permittees desiring approval of distinctive liquor bottles. See ATF Rul. 80-4, above.

27 CFR 19.701: RETURN OF TAX-PAID SPIRITS TO BONDED PREMISES

(Also 19.702)

On approval of an alternate method of gauging, taxpaid or tax-determined spirits may be returned to bonded premises on a gauge established by case markings and bottle label information, and, in the case of bulk spirits, on the basis of a volumetric determination of quantity. ATF Rul. 76-20, ATF C.B. 1976, 87, superseded.

ATF Rul. 80-5

The Bureau of Alcohol, Tobacco and Firearms has been asked whether the provisions in ATF Ruling 76-20 apply to distilled spirits under current law and regulations. Changes in law under the Distilled Spirits Tax Revision Act of 1979 resulted in the recodification of 27 CFR Parts 186 and 201, as Parts 13 and 19, respectively. Under the changes, all distilled spirits operations are conducted on the bonded premises of a distilled spirits plant.

Under 26 U.S.C. 5215(a), distilled spirits on which the tax has been determined or paid may be returned to bonded premises for destruction, denaturation, redistillation, reconditioning, or rebottling. Under 26 U.S.C. 5008(c) the law provides that when distilled spirits which have been withdrawn from bonded premises on payment or determination of tax are returned to the bonded premises of a distilled spirits plant under 26 U.S.C. 5215(a), the tax shall be abated, credited or refunded.

Regulations require in 27 CFR 19.701 that spirits returned to bonded premises under 26 U.S.C. 5215 shall be gauged upon receipt on bonded premises, and that the gauge shall be recorded in the appropriate distilled spirits plant records. Regulations also require in 27 CFR 19.702 that such spirits returned to bonded premises shall be immediately dumped, and that on receipt the proprietor shall gauge the spirits for immediate disposition. The term "gauging" is defined in 27 CFR 13.1 as the determination of the proof and the quantity of distilled spirits. To determine the proof of bottled spirits under current regulations, the spirits would have to be dumped prior to the proof determination.

In ATF Rul. 76-20, ATF C.B. 1976, 87 the Bureau provided that upon proper authorization, proprietors could, as an alternative method of gauging, return taxpaid or tax determined spirits to bonded premises on the basis of a gauge established by case markings and bottle label information. This ruling continues under current law and regulations the provisions in ATF Rul. 76-20, and recognizes the use of alternative devices in lieu of strip stamps.

Held, taxpaid or tax determined spirits that are returned to bonded premises in bottles may be gauged on the basis of case markings and bottle label information when the bottles are full, strip stamps or alternative devices are unbroken, original labels and case markings are legible, no evidence of tampering is found, and when an application to use such alternative method of gauging has been approved. Additionally, the quantity of taxpaid or tax determined spirits returned to bond in bulk may be established on the basis of a volumetric determination. To use an alternate method of gauging, an application shall be filed and approved pursuant to 27 CFR 19.62. Any application approved under the prior cited ruling need not be resubmitted for approval.

ATF Ruling 76-20, ATF C.B. 1976, 87 is hereby superseded.

27 CFR 19.702: RECEIPT AND DISPOSITION OF RETURNED TAXPAID SPIRITS

Taxpaid spirits may be returned to bonded premises on an alternate gauge. See ATF Rul. 80-5, above.

27 CFR 240.524: FINISHING OF WINE

Limitations on substances foreign to wine. See ATF Rul. 80-6, below.

27 CFR 240.1052: NOTICE
(Also 240.524)

The use of silica gel (colloidal silicon

best copy available

dioxide 30%; Kieselsol-Baykisol 30) in the clarification of apple wine and pear wine is increased from a maximum level of 1.6 pounds to 10 pounds per 1,000 gallons of wine. ATF Rul. 79-12 and ATF Rul. 79-20 supplemented.

ATF Rul. 80-6

The Director of the Bureau of Alcohol, Tobacco and Firearms, finds the use of silica gel (colloidal silicon dioxide 30%; Kieselsol-Baykisol 30) in the clarification of apple wine and pear wine in an amount not exceeding 10 pounds per 1,000 gallons to be consistent with good commercial practice. Accordingly, the maximum use level for silica gel in the treatment of such wines is increased from 1.6 pounds to 10 pounds per 1,000 gallons of wine.

A winemaker desiring to use silica gel at the new maximum use level may obtain approval for such use from the regional regulatory administrator of the region in which his bonded wine cellar is located by filing notice pursuant to the provisions of 27 CFR 240.1052.

ATF Rul. 79-12, ATF Q.B. 1979-2, and ATF Rul. 79-20, ATF Q.B. 1979-4, are hereby supplemented.

27 CFR 245.30: METERING SYSTEMS REQUIRED

(Also 245.32 and 245.211)

ATF establishes criteria for evaluating applications filed by brewers who wish to use some means other than beer meters to determine the amount of beer or cereal beverages transferred from brewery cellars to packaging operations.

ATF Rul. 80-7

The Bureau of Alcohol, Tobacco and Firearms has been asked whether some means other than meters may be used to measure the amount of beer or cereal beverage transferred from brewery cellars to packaging operations.

Regulation 27 CFR 245.30 provides that "Brewers shall be required to provide, at their own expense, approved meters for measuring beer to be packaged."

Regulations 27 CFR 245.32 and 245.211 provide, respectively, that all beer and cereal beverage to be packaged shall pass through meters.

Regulation 27 CFR 245.222 provides, in part, that a brewer who proposes to use an alternate method of operation should submit a letterhead application in triplicate to the appropriate regional regulatory administrator. The application should describe the proposed variation and state the need therefor. The regional regulatory administrator will evaluate the need for the variation and whether approval thereof will hinder the effective administration of Part 245 (Beer Regulations) or result in jeopardy to the revenue. On completion of such inquiry, the regional regulatory administrator will forward two copies of the application to the Director, together with a report of his findings and his recommendations.

Regulation 27 CFR 245.221 provides, in part, that the Director may approve alternate methods of brewery operation in lieu of those specified in Part 245 if, in addition to satisfying the criteria described in the preceding paragraph, the alternate method is not contrary to any provision of law.

In considering whether the proposed alternate method will result in jeopardy to the revenue or hinder the effective administration of Part 245, regional regulatory administrators will take into account: (1) whether the brewer exhibits adequate overall control over his brewery, with special attention being given to the accuracy of the brewer's determination of the amount of beer bottled and racked; and (2) whether the proposed alternate means of measuring beer is accurate.

In consideration of the general unavailability of mechanical beer meters and the difficulty in obtaining parts to repair such meters, the need for brewers to use alternate means of measuring beer is considered to be well established, with respect to mechanical meters.

This ruling is not intended to alter present requirements (per Form 103, Brewer's Monthly Report of Operations) to separately report all bulk racking operations and bulk bottling operations and the amount of beer transferred to each such operation.

Held, a brewer who wishes to apply for permission to operate his brewery without using beer meters should submit an application so requesting. The application should be submitted (to the Director, ATF, through the appropriate regional regulatory administrator) on an individual brewery basis in accordance with the provisions of 27 CFR 245.222.

27 CFR 245.32: LOCATION AND INSTALLATION

A brewer who wishes to apply for permission to operate his brewery without using beer meters should submit an application so requesting. See ATF Rul. 80-7, page 18.

27 CFR 245.211: PRODUCTION AND REMOVAL OF CEREAL BEVERAGE

A brewer who wishes to apply for permission to operate his brewery without using beer meters should submit an application so requesting. See ATF Rul. 80-7, page 18.

27 CFR 250.314: DISTINCTIVE LIQUOR BOTTLES

Alternate procedural requirements are provided for permittees desiring approval of distinctive liquor bottles. See ATF Rul. 80-4, page 16.

27 CFR 251.204: DISTINCTIVE LIQUOR BOTTLES

Alternate procdeural requirements are provided for permittees desiring approval of distinctive liquor bottles. See ATF Rul. 80-4, page 16.

Subpart C—FIREARMS

27 CFR 178.11: MEANING OF TERMS

Certain firearms classified as curios or relics. See ATF Rul. 80-9, page 20.

27 CFR 178.11: MEANING OF TERMS

Certain ammunition classified as curios or relics. See ATF Rul. 80-10, page 32.

27 CFR 178.11: MEANING OF TERMS

Certain NFA firearms removed from the Act and classified and Curios or relics. See ATF Rul. 80-11, page 35.

27 CFR 178.11: MEANING OF TERMS

Certain NFA weapons prized by licensed collectors classified as curios or relics. See ATF Rul. 80-12, page 41.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

Certain NFA firearms removed from the Act and classified as curios or relics. See ATF Rul. 80-11, page 35.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

Certain NFA weapons prized by licensed collectors classified as curios or relics. See ATF Rul. 80-12, page 41.

27 CFR 178.112: IMPORTATION BY A LICENSED IMPORTER

(Also 178.115, 178.141)

Applications to import surplus military firearms or nonsporting firearms or ammunition for individual law enforcement officers for official use must be accompanied by the agency's purchase order.

ATF Rul. 80-8

The Bureau of Alcohol, Tobacco and Firearms has received several inquiries from firearms importers and dealers, law enforcement agencies, and the public requesting clarification of the statutes, regulations and procedures regarding the importation of firearms for law enforcement agencies.

Importation of surplus military firearms or firearms not particularly suitable for or readily adaptable to sporting purposes is generally prohibited by section 925(d)(3) of Title 18, United States Code. However, section 925(a)(1) provides that this prohibition does not apply to the importation of firearms or ammunition sold or shipped to, or issued for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

Pursuant to section 925(a)(1), the Bureau has previously allowed the importation of surplus military firearms and nonsporting firearms for individual law enforcement officers for official use. In approving such importation applications, the Bureau required federal firearms licensees to obtain from the agency employing the officer a certificate of the chief law enforcement officer stating that the firearm or ammunition is for use in the performance of official duties.

However, once these firearms are imported for the individual officer for "official use," there is no prohibition in the law against the officer's resale or retention of the firearms for personal use. The purpose of section 925(a)(1) is to permit importation of firearms for the exclusive use of government agencies. The statute was not intended and may not be used as a vehicle by which unimportable firearms can be introduced into ordinary commercial channels in the United States.

Held, a licensee's application to import surplus military firearms or nonsporting firearms or ammunition for law enforcement officers will not be approved unless accompanied by a purchase order from a department or agency of the United States or any department, agency or political subdivision of any State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States.

27 CFR 178.115: EXEMPT IMPORTATION

An application to import a surplus military firearm or firearm not particularly suitable for or readily adaptable to sporting purposes for a Federal or State agency must be accompanied by a purchase order. See ATF Ruling 80-8, above.

27 CFR 178.141: GENERAL

A firearm or ammunition may be imported for a Federal or State agency under certain conditions. A purchase order from the government entity is required to obtain approval of the importation of surplus military firearms or firearms not particularly suitable for or readily adaptable to sporting purposes. See ATF Ruling 80-8, above.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

(Also 178.11)

Certain firearms are classified as curios or relics. ATF Ruling 79-13 superseded.

ATF Rul. 80-9

The Bureau of Alcohol, Tobacco and Firearms has been asked to determine whether certain firearms, prized by licensed collectors for their limited availability and their distinctive markings denoting specific historical backgrounds, may be classified as curios or relics.

With respect to firearms, 27 CFR 178.11 defines a curio or relic as a firearm having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons.

The Bureau has determined that the following firearms are curios or relics as defined in 27 CFR 178.11 because they fall within one of the categories specified in the regulations.

Such determination merely classifies the firearms as curios or relics and thereby authorizes licensed collectors to acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and the regulations in 27 CFR Part 178. They are still "firearms" as defined in 18 U.S.C. 921(a)(3).

Armand Gevage .32ACP caliber semiautomatic pistols, as manufactured in Belgium prior to World War II.

Astra M 300 pistol, calibers 7.65mm and 9mm Kurz, marked with German Waffenamt acceptance stamp, 1939-1945.

Astra M 400 pistol, German Army Contract, caliber 9mm Bergmann-Bayard, Serial Number range 97351-98850.

Astra Model 400 semiautomatic pistol, second German Army Contract, caliber 9mm Bergmann-Bayard, in the serial number range 92851 through 97350.

Astra M 600 pistol, caliber 9mm Parabellum, marked with German Waffenamt acceptance stamp, 1939-1945.

Astra M 800 Condor Model, pistol, caliber 9mm Parabellum.

Baker Gun and Forging Company, all firearms manufactured from 1899 to to 1919.

Bannerman Model 1937, Springfield rifle, caliber 30-06.

Bayard Model 1923 semiautomatic pistol, caliber 7.65mm or .380, Belgian manufacture.

Beretta Model 1915 pistols, caliber 6.35mm, 7.65mm, and 9mm Glisenti.

Beretta Model 1915/1919 (1922) pistol (concealed hammer), caliber 7.65mm.

Beretta Model 1919 pistol (without grip safety), caliber 6.35 mm.

Beretta Model 1923 pistol, Caliber 9mm Glisenti.

Beretta Model 1931 pistol, bearing Italian Navy Crest consisting of the letters "RM" and an anchor on the grip medalion, caliber 7.65 mm.

Beretta Model 1932 pistol, having smooth wooden grips with "PB" medallion, caliber 9mm.

Beretta Model 1934 pistols, caliber 9mm post war variations bearing Italian Air Force eagle markings.

Beretta Model 1934 pistols, caliber 9mm, produced during 1945 or earlier and having serial numbers within the following ranges—500000 to 999999, F00001 to F120000, G0001 to G80000, 00001AA to 10000AA, or 00001BB to 10000BB. This classification does not include any post war variations dated subsequent to 1945 or bearing post war Italian proof marks.

Beretta Model 1934 pistol, light weight model marked "Tipo Alleggerita" or "All" having transverse ribbed barrel, caliber 9mm.

Beretta Model 1935 pistol, Rumanian Contraçt, marked "P. Beretta—Cal. 9 Scurt—Mo. 1934—Brevet." on the slide, caliber 9mm.

Beretta Model 1935 pistol, Finnish Home Guard Contract, marked "SKY" on the slide, caliber 7.65mm.

Beretta Model 1935 pistols, caliber 7.65mm, produced during 1945 and earlier and having serial numbers below 620799.

Beretta M1951 pistol, Egyptian Contract, caliber 9mm Parabellum.

Beretta M1951 pistol, Israeli Contract, caliber 9mm Parabellum.

Bergmann-Bayard M1908 pistol, caliber 9mm Bergmann-Bayard.

Bernardelli Model 1956, experimental pistol, caliber 9mm Parabellum.

Bern Arsenal Experimental Gas Locked pistol, caliber 9mm Parabellum.

Bern Arsenal Experimental 16-shot pistol, caliber 9mm Parabellum.

FN Browning, Model 1902 (usually known as the Model 1903) semiautomatic pistol, caliber 9mm Browning long.

Browning Centennial Model High-Power Pistol, caliber 9mm Parabellum.

Browning Centennial Model 92 lever action rifle, caliber .44 Magnum.

Browning Superposed Centennial, consisting of a 20 gauge superposed shotgun, supplied with an extra set of .30-06 caliber superposed barrels.

Browning Hi-Power pistols, caliber 9mm having German Waffenamt inspector's marks.

Browning M1935 Hi-Power pistol, Canadian, Congolese, Indian and Nationalist Chinese Contracts, caliber 9mm Parabellum.

Browning "Baby" Model pistol, Russian Contract, caliber 6.35mm.

Browning M1910 and M1922 pistol, Contract pieces; M1910 Dutch Navy, M1922 Dutch or French Navy, and M1922 Yugoslavian Army calibers 7.65mm and 9mm Kurz.

Browning M1922 pistol, caliber 7.65 mm bearing German Navy acceptance stamps.

Browning M1922 pistol, caliber 9mm, bearing German Waffenamt acceptance stamp, 1939-1945.

Browning Model 1922 pistol, caliber 7.65mm, bearing German NSDAP or RFV markings.

Browning Model 1922 pistol, caliber 7.65mm or 9mm Kurz, marked with the Greek letters Epsilon Sigma denoting issue to the Greek Army.

Browning Model 1922 pistol, caliber 7.65mm or 9mm Kurz, marked "T.C. Subay" denoting issue to the Army of the Turkish Republic.

Browning Model 1922 pistol, caliber 7.65mm or 9mm Kurz, marked "C.P.I.M." denoting issue to the Belgian Political Police.

Browning Model 1922 pistol, caliber 7.65mm or 9mm Kurz, marked "S.P." and/or bearing the crest of the Kingdom Thailand.

Budischowsky, Model TP70, semiautomatic pistol, caliber .25 ACP, with custom serial number DB1.

Campo-Giro Model 1913 and 1913/16 pistol, caliber 9mm Largo.

Chinese Communist types 51 and 54 Tokarev pistols, caliber 7.62mm.

Chinese, Peoples Republic of China, copy of Japanese Type Sigiura Shiki semiautomatic pistol, caliber 7.65 mm.

Chylewski semiautomatic pistol manufactured by S.I.G. Switzerland, caliber 6.35mm (.25 ACP).

Clement pistol, Belgian manufacture, caliber 5mm Clement.

Colt Ace Service Model semiautomatic pistol, caliber .22, manufactured by Colt from 1935 to 1945, serial number range from SM1 to SM13803 including those marked "UNITED STATES PROPERTY" on the right side of the frame.

Colt Ace semiautomatic pistol, caliber .22, manufactured by Colt from

1931 to 1947, serial number range from 1 to 10935 including those marked "UNITED STATES PROPERTY" on the right side of the frame.

Colt Aircrewman revolver produced between 1951 and 1959, caliber .38 Special, marked "Property of U.S. Air Force" on back strap, having Air Force issue numbers of 1 thru 1189 and in the serial number range 1902LW thru 90470LW.

Colt, First Model, Match Target Woodsman, caliber .22, semiautomatic pistol, manufactured from 1938 to 1944, serial numbers MT1 to MT15,000.

Colt, J frame, Officer's Model Match, .38 Special revolver manufactured from 1970 to 1972, identified by a J serial number prefix.

Colt Model 1900 semiautomatic pistol, caliber .38, in original configuration.

Colt Model 1902 semiautomatic pistol, sporting model, caliber .38, in original configuration.

Colt Model 1902 semiautomatic pistol, military model, caliber .38, in original configuration.

Colt Model 1903 Pocket (exposed hammer), semiautomatic pistol caliber .38 ACP.

Colt Model 1903 Pocket (hammerless), semiautomatic pistol, caliber .32.

Colt Model 1908, caliber .25 ACP, hammerless semiautomatic pistol, having a grip safety, in serial number range 1 thru 409061.

Colt Model 1908 Pocket (hammerless) semiautomatic pistol caliber .380.

Colt Model 1911 Commercial semiautomatic pistols, caliber .45 ACP, serial numbers C1 thru C130,000.

Colt Model 1911 pistol, English Contract, caliber .455.

Colt Model 1911-A1, commercial model, in caliber .45 and bearing Egyptian inscription meaning police, on the upper forward right-hand side of the trigger guard and having serial numbers within the range of C186000 to C188000.

Colt Model 1911-A1, .45 caliber pistol, manufactured by Union Switch and Signal Company, prototype model, bearing serial number US & S Exp. 1 to US & S Exp. 100.

Colt Fourth Model Derringer, caliber .22 short rimfire, cased as a set of two pistols in a leather book titled "Colt Derringer, Limited Edition, by Colt," on the spine of the book and "A Limited Edition by Colt," on the cover.

Colt Government Model pistols in caliber .45 ACP, BB Series.

Colt Mk IV Series 70 semiautomatic pistols in all calibers, which were incorrectly marked at the factory with both Colt Government Model markings and Colt Commander markings.

Colt New Service revolvers as manufactured between 1898 and 1944, all variations, all calibers.

Colt Officers Model (1904-1930), .38 caliber revolver.

Colt Officers Model (1930-1949), .22 caliber revolver.

Colt Officers Model Match (1953-1969), .22 and .38 caliber revolvers.

Colt Officers Model Special (1949-1952), .22 and .38 caliber revolvers.

Colt Officers Model Target (1930-1949), .32 and .38 caliber revolvers.

Colt, single action Army (Bisley, Standard, and target variations), all original, manufactured from 1899 to 1946, serial number range from 182000 to 357869.

Colt, Abercrombie and Fitch, "Trailblazer," .45 New Frontier.

Colt, Alabama Sesquicentennial, .22.

Colt, Alamo, .22 and .45.

Colt, Abilene, .22 (Kansas City-Cow Town).

Colt, Appomattox Court House Centennial, .22 and .45.

Colt, Arizona Ranger Model Commemorative, .22 revolver.

Colt, Arizona Territorial Centennial, .22 and .45.

Colt, Arkansas Territory Sesquicentennial, .22.

Colt, Battle of Gettysburg Centennial, .22.

Colt, Belleau Wood, .45 Pistol, (World War I Series).

Colt, California Bicentennial, .22.

Colt, California Gold Rush, .22 and .45.

Colt, Camp Perry Single Shot, Target Pistols, .22 long rifle or .38 Special caliber.

Colt, Carolina Charter Tercentenary, .22 and .22/.45.

Colt, Chamizal Treaty, .22 and .45.

Colt, Chateau Thierry, .45 Pistol, (World War I Series).

Colt, Cherry's Sporting Goods 35th Anniversary, .22/.45.

Colt, Chisholm Trail, .22 (Kansas Series-Trails).

Colt, Civil War Centennial Single Shot, .22.

Colt, Coffeyville, .22 (Kansas Series-Cow Town).

Colt, Colorado Gold Rush, .22.

Colt, Colonel Samuel Colt, Sesquicentennial, .45.

Colt, Colt's 125th Anniversary, .45.

Colt, Columbus (Ohio) Sesquicentennial, .22.

Colt, H. Cook, "1 of 100," .22/.45.

Colt, Dakota Territory, .22.

Colt, Des Moines, Reconstruction of Old Fort, .22 and .45.

Colt, Dodge City, .22 (Kansas Series-Cow Town).

Colt, Wyatt Earp, Buntline Special, .45 (Lawman Series).

Colt, Wyatt Earp, .22 and .45 (Lawman Series).

Colt, European Theater, .45 Pistol (World War II Series).

Colt, Florida Territory Sesquicentennial, .22.

Colt, General Nathan Bedford Forrest, .22.

Colt, Fort Findlay (Ohio) Sesquicentennial, .22.

Colt, Fort Hays, .22 (Kansas Series-Forts).

Colt, Fort Larned, .22 (Kansas Series-Forts).

Colt, Fort McPherson (Nebraska) Centennial Derringer, .22.

Colt, Fort Scott, .22 (Kansas Series-Forts).

Colt, Fort Stephenson (Ohio) Sesquicentennial, .22.

Colt, Fort-Niner Miner, .22.

Colt, Pat Garrett, .22 and .45 (Lawman Series).

Colt, Genesco (Illinois) 125th Anniversary, Derringer, .22.

Colt, Golden Spike Centennial, .22.

Colt, Wild Bill Hickok, .22 and .45 (Lawman Series).

Colt, General Hood, Tennessee Campaign Centennial, .22.

Colt, Idaho Territorial Centennial, .22.

Colt, Indiana Sesquicentennial, .22.

Colt, Kansas Centennial, .22.

Colt, Maine Sesquicentennial, .22 and .45.

Colt, Bat Masterson, .22 and .45 (Lawman Series).

Colt, General George Meade, Pennsylvania Campaign, .22 and .45.

Colt, Meuse Argonne, .45 Pistol (World War I Series).

Colt, Montana Territory Centennial, .22 and .45.

Colt, Missouri Sesquicentennial, .22.

Colt, General John Hunt Morgan, Indiana Raid, .22.

Colt, Joaquin Murrieta, "1 of 100," .22/.45.

Colt, Nebraska Centennial, .22.

Colt, Nevada Centennial, .22 and .45.

Colt, Nevada Centennial "Battle Born," .22 and .45.

Colt, New Jersey Tercentenary, .22 and .45.

Colt, New Mexico Golden Anniversary, .22.

Colt, NRA Centennial, single action revolver, in calibers .357 Magnum and .45.

Colt, NRA Centennial, Gold Cup National Match pistol, in caliber .45.

Colt, Oklahoma Territory Diamond Jubilee, .22.

Colt, Oregon Trail, .22 (Kansas Series-Trails).

Colt, Pacific Theater, .45 Pistol (World War II Series).

Colt, Pawnee Trail, .22 (Kansas Series-Trails).

Colt, Peacemaker Commemorative, .22 and .45 revolver.

Colt, Pony Express, Russell, Majors and Waddell, Presentation Model .45.

Colt, Pony Express Centennial, .22.

Colt, Rock Island Arsenal Centennial Single Shot, .22.

Colt, St. Augustine Quadricentennial, .22.

Colt, St. Louis Bicentennial, .22 and .45.

Colt, Santa Fe Trail, .22 (Kansas Series-Trails).

Colt, Second (2nd) Marne, .45 Pistol (World War I Series).

Colt, Shawnee Trail, .22 (Kansas Series-Trails).

Colt, Sheriff's Model, .45.

Colt, Texas Ranger, .45.

Colt, "The Right to Keep and Bear Arms" commemorative, .22 caliber Peacemaker Buntline, single action revolver having a 7½-inch barrel with the inscription "The Right to Keep and Bear Arms" inscribed on the barrel and a serial number range of G0001RB thru G3000RB.

Colt, United States Bicentennial Commemorative, Python revolver, caliber .357.

Colt, United States Bicentennial Commemorative, single action army revolver, caliber .45.

Colt, West Virginia Centennial, .22 and .45.

Colt, Wichita, .22 (Kansas Series-Cow Town).

Colt, Woodsman, caliber .22, semiautomatic target pistol, manufactured from 1915 to 1943, serial number 1 to 157,000.

Colt, Wyoming Diamond Jubilee, .22.

Colt, 1873 Peacemaker Centennial 1973, single action revolver, 44/.40 or .45.

Czechoslovakian CZ50 pistol, caliber 7.65mm.

Czechoslovakian CZ52 pistol, caliber 7.62mm.

Czechoslovakian CZ27 pistol, caliber 7.65mm, with flanged barrel for silencer and bearing German Waffenamt acceptance stamp, 1939-1945.

Czechoslovakian CZ38 pistol, caliber 9mm Kurz, with or without German Waffenamt acceptance stamp.

Czechoslovakian Model 24 pistol, caliber 9mm Kurz, marked with German Navy acceptance stamps, Navy proof marks or issuance marks.

Czechoslovakian Model 27 pistol, caliber 7.65mm, marked with German Navy acceptance stamps, Navy proof marks or issuance marks.

Czechoslovakian Model 1927 pistol, caliber 7.65mm, bearing German Waffenamt acceptance markings.

Czechoslovakian Model 1952 and 1952/57, 7.62 x 45mm and 7.62 x 39mm caliber, semiautomatic rifles (Puska Vzor 52, 7.62 x 45mm, and Puska Vzor 52/57, 7.62 x 39mm).

Danish M1910/1921 Bayard, pistol, caliber 9mm Bergmann-Bayard.

Davis Warner Infallible, semiautomatic pistol, caliber .32.

Dreyse Military Model 1910 pistol, caliber 9mm.

Egyptian Hakim (Ljungman) 7.92mm semiautomatic rifle as manufactured in Egypt.

Esser-Barratt, English manufacture, slide action rifle, caliber .303.

French S.A.C.M. Model 1935A pistol, caliber 7.65 Long, marked with

German Navy acceptance stamps, Navy proof marks or issuance marks.

French M1935 pistol, caliber 7.65 French Long, bearing German Waffenamt acceptance stamp for period of 1939-1945.

French Model 1949, caliber 7.5mm, semiautomatic rifle (Fusil Mle. 1949 (MAS) 7.5mm).

German P38 pistols, caliber 9mm Parabellum manufactured prior to 1947.

Gustloff semiautomatic pistol, in caliber 7.65mm, manufactured by Gustloff Werke, Suhl, Germany.

Hammond or Grant Hammond pistols, all models, variations or prototypes, made by Grant Hammond Corporation, New Haven, Connecticut.

Hammond/Hi-Standard semiautomatic pistols, in caliber .45.

Harrington and Richardson, Abilene Anniversary, .22 revolver.

Harrington and Richardson, Centennial Officer's Model Springfield rifle, .45-70 Govt.

Harrington and Richardson, Centennial Standard Model Springfield rifle, .45-70 Govt.

Harrington and Richardson, Self-loading semiautomatic pistol, caliber .32.

Hartford Arms and Equipment Company single shot target pistol, caliber .22LR.

Hartford Arms and Equipment Company repeating pistol, caliber .22LR.

Hartford Arms and Equipment Company Model 1928 pistol, caliber .22LR.

Hi-Standard experimental electric free pistol, caliber .22 long rifle.

Hi-Standard Model P38, semiautomatic pistol, caliber .38 special.

Hi-Standard experimental Model T-3 semiautomatic pistol, caliber 9mm Luger.

High-Standard Model C/S smoothbore .22 caliber shot semiautomatic pistols, bearing serial numbers 59279, 59473, 59478, or 59460.

Hi-Standard experimental ISU rapid fire semiautomatic pistol, caliber .22 short.

High Standard Model A pistol, caliber .22LR.

High Standard Model B pistol, caliber .22LR.

High Standard Model C pistol, caliber .22Short.

High Standard Model D pistol, caliber .22LR.

High Standard Model E pistol, caliber .22LR.

High Standard Model H-A pistol, caliber .22LR.

High Standard Model H-B pistol, first model, caliber .22LR.

High Standard Model H-B pistol, second model, caliber .22LR.

High Standard Model H-D pistol, caliber .22LR.

High Standard Model H-E pistol, caliber .22LR.

High Standard Model USA-HD pistol, caliber .22LR.

High Standard Model HD-Military pistol, caliber .22LR.

High Standard Model G-380 pistol, caliber .380.

High Standard Model G-B pistol, caliber .22LR.

High Standard Model G-D pistol, caliber .22LR.

High Standard Model G-E pistol, caliber .22LR.

High Standard Model G-O (First Model Olympic) pistol, caliber .22 Short.

High Standard Supermatic Trophy, Model 107, .22 pistol Olympic Commemorative Model.

Hungarian Frommer Model 1937 pistol, caliber 7.65mm, marked with German Navy acceptance stamps, Navy proof marks or issuance marks.

Hungarian Model 1937 pistol, caliber 7.65mm, bearing German Waffenamt acceptance markings.

Italian Brixia M1906, pistol, caliber 9mm Glisenti.

Italian Glisenti M1910, pistol, caliber 9mm Glisenti.

Ithaca, St. Louis Bicentennial, Model 49, .22 rifle.

Japanese Type I Hamada (1941) pistol, caliber 7.65mm.

Japanese Type II Hamada, pistol, caliber 7.65mm.

Japanese Type 14 (1925) pistol, caliber 8mm Nambu.

Japanese Type 94 (Model 1934), pistol, caliber 8mm Nambu (8 x 21mm cartridge), manufactured in Japan 1934-1945.

Japanese "Grandpa" Nambu, Model 1904, pistol, caliber 8mm Nambu.

Japanese "Baby" Nambu pistol, caliber 7mm Nambu.

Japanese Type Sigiura Shiki semiautomatic pistol, caliber 7.65mm and 6.35mm.

Jieffeco pistol, Belgian manufacture, caliber 7.65mm.

Jieffeco, semiautomatic pistol, in caliber .25 ACP, marked "Davis Warner Arms Corp., N.Y."

Kimball pistols, all models, all calibers.

Kolibri pistols, calibers 2.7mm and 3mm Kolibri.

L. C. Smith Shotguns manufactured by Hunter Arms Company and Marlin Firearms Company from 1899 to 1971.

Lahti L-35 pistol, Finnish manufacture, caliber 9mm Parabellum.

Luger, pistol, all models and variations manufactured prior to 1946.

Luger, Mauser commercal manufacture, semiautomatic pistol, 70 Jahre, Parabellum-Pistole, Keiserreich Russland, commemorative, caliber 9mm.

Luger, Mauser commercial manufacture, semiautomatic pistol, 75 Jahre, Parabellum-Pistole, 1900-1975, commemorative, caliber 7.65mm.

Luger, Mauser commercial manufacture, semiautomatic pistol, 75 Jahre, Parabellum-Pistole, Konigreich Bulgarien, commemorative, caliber 7.65mm.

MAB Model D pistol, caliber 7.65mm bearing German Navy acceptance stamp.

MAB Model D pistol, caliber 7.65mm bearing German Waffenamt acceptance stamp for the period 1939-1945.

MAB Model R pistol, caliber 9mm Parabellum.

Makarov pistol, Russian and East German, caliber 9mm Makarov.

Mannlicher pistol, M1900, M1901, M1903 and M1905, caliber 7.63mm Mannlicher.

Marlin 90th Anniversary, Model 39-A, .22 Rifle.

Marlin 90th Anniversary, Model 39-A, .22 Carbine.

Original military bolt action and semiautomatic rifles manufactured between 1899 and 1946.

Mauser M1970/34 pistol, caliber 6.35 mm.

Mauser, Congolese Model 1950 rifles marked FP 1952 on the receiver, caliber .30/06.

Mauser M1910, pistol, caliber 7.65mm marked with German Navy acceptance stamp World War I through World War II.

Mauser M1910/34, pistol, caliber 7.65 mm, marked with German Navy acceptance stamp.

Mauser M1934, pistol, caliber 7.65mm marked with Third Reich police acceptance stamps of Eagle C, F, K or L.

Mauser M1934, pistol, caliber 7.65 mm, marked with German Navy acceptance stamp.

Mauser M1934, pistol, caliber 7.65 mm, marked with German Waffenamt acceptance stamp.

Mauser Model 1896 selfloading pistols, All German manufactured semiautomatic variations produced prior to 1940, any caliber.

Mauser HSc, pistol, caliber 7.65mm, marked with Third Reich police acceptance stamps of Eagle C, F, K or L.

Mauser HSc pistols manufactured prior to 1947 and having serial numbers between 700000 and 968000.

Menz Liliput, German manufacture, caliber 4.25mm.

Menz PBIII, in caliber 7.65mm, manufactured by August Menz, Suhl, Germany.

Menz PBIIIA, in caliber 7.65mm, manufactured by August Menz, Suhl, Germany.

Menz PBIV, in caliber 7.65mm, manufactured by August Menz, Suhl, Germany.

Menz PBIVa, in caliber 7.65mm, manufactured by August Menz, Suhl, Germany.

Menz Special, in caliber 7.65mm, manufactured by August Menz, Suhl, Germany.

Mexican Obregon, pistol, caliber .45 ACP.

Mugica Model 120, pistol, caliber 9mm Parabellum.

North Korean Type 1964, pistol, caliber 7.62mm Tokarev.

Norwegian M1914, pistol, caliber .45 ACP.

PAF "Junior" semiautomatic pistol, caliber .25, manufactured by the Pretoria Arms Factory Ltd. of South Africa.

PAF pistol, marked "BRF," caliber .25, manufactured by the Pretoria Arms Factory Ltd. of South Africa.

Phoenix (U.S.A.) pistol, caliber .25 ACP.

Polish FB "VIS," M1935 (Radom), pistol, caliber 9mm Parabellum, Original Republic of Poland model with an eagle crest and Polish inscription on left side of slide. Dated 1936, 1937, 1938, or 1939 and having small sized serial numbers in the range 1 through 50,000 without letter or number prefix or suffix.

Polish VB "VIS" Model 1935 (Radom) pistol, caliber 9mm Parabellum, bearing German military acceptance markings.

Reising .22 caliber, semiautomatic pistol.

Remington Canadian Territorial Centennial, Model 742, Rifle.

Remington, Model 51, semiautomatic pistol, calibers .32 ACP or .380 ACP.

Remington Montana Territorial Centennial, Model 600, Rifle.

Roth Steyr 1907, semiautomatic pistol, caliber 8mm.

Ruger Canadian Centennial, Matched No. 1 Rifle Sets, Special Deluxe.

Ruger Canadian Centennial, Matched No. 2 Rifle Sets.

Ruger Canadian Centennial, Matched No. 3 Rifle Sets.

Ruger Canadian Centennial, Model 10/22, Carbine.

Ruger, flattop, "Blackhawk" revolvers, calibers .44 Magnum and .357 Magnum, all barrel lengths, made from 1955 through 1962.

Ruger, flattop, single-six, .22 caliber revolvers with flat side loading gate, all barrel lengths, made from 1953 through 1956.

Sauer 38(h), pistol, caliber 7.65mm marked with Third Reich police acceptance stamps of Eagle C, F, K or L.

Sauer 38H pistol, caliber 7.65mm bearing German Waffenamt acceptance markings.

Savage Arms, semiautomatic pistols, caliber .45 ACP, all models.

Savage, Prototype pistols, caliber .25, .32 and .38 made between 1907 and 1927.

Savage, Model 1907 Pistols, caliber .32 and .380.

Savage, Model 1907 Pistols, caliber .45 military contract.

Savage, Model 1911 Pistol, caliber .45, Prototype.

Savage, Model 1915 Pistol, caliber .32 and .380.

Savage, Model 1917 Pistol, caliber .32 and .380.

Smith & Wesson, Model .22/32 Hand Ejector (Bekeart Model), caliber .22 LR, serial numbers 138220 to 534636 (no letter).

Smith & Wesson, K-22 Hand Ejector, caliber .22 LR, serial numbers 632132 to 696952 (no letter).

Smith & Wesson, K-32 Hand Ejector (K-32 Masterpiece), caliber .32 S&W Long, serial numbers 653388 to 682207 (no letter).

Smith & Wesson, .38 Hand Ejector Military and Police, caliber .38, serial numbers 1 to 241703 (no letter).

Smith & Wesson, .357 Magnum Hand Ejector, caliber .357 Magnum, serial numbers 45768 to 60000 (no letter).

Smith & Wesson, .44 Hand Ejector, all calibers, serial numbers 1 to 62488 (no letter).

Smith & Wesson, .455 Mark II Hand Ejector, caliber .455.

Smith & Wesson Mercox Dart Gun, caliber .22 rimfire, blank.

Smith & Wesson, .22/32 Kit Gun, caliber .22 LR, serial numbers 525670 to 534636 (no letter).

Smith & Wesson, .32 Double Action Top Break, caliber .32 S&W, serial numbers 209302 and higher.

Smith & Wesson, .32 Safety Hammerless Top Break (New Departure), caliber .32 S&W, serial numbers 91401 and higher.

Smith & Wesson, .38 Double Action Top Break, caliber .38 S&W, serial numbers 382023 and higher.

Smith & Wesson, .38 Double Action Top Break Perfected Model, caliber .38 S&W.

Smith & Wesson, .38 Safety Hammerless Top Break (New Departure), caliber .38 S&W, serial number 119901 and higher.

Smith & Wesson, pistol, caliber .35, all variations.

Smith & Wesson, 2nd Model, single shot pistol, calibers .22 rimfire, .32 S & W and .38 S & W.

Smith & Wesson, 3rd Model, single shot pistol, caliber .22 rimfire, .32 S & W and .38 S & W.

Smith & Wesson, 1st Model, Ladysmith revolver, caliber .22 rimfire long.

Smith & Wesson, 2nd Model, Ladysmith revolver, caliber .22 rimfire long.

Smith & Wesson, 3rd Model, Ladysmith revolver, caliber .22 rimfire long.

Smith & Wesson Model 39-1 (52-A), pistol, caliber 9mm Parabellum.

Smith & Wesson Model 39, steel frame pistol, caliber 9mm Parabellum.

Smith & Wesson, pistol, caliber .32 ACP.

Smith & Wesson Model Straight Line, single shot pistol, caliber .22 rimfire long rifle.

Smith & Wesson, Model 16 (K-32 Masterpiece), caliber .32 S&W Long, "K" serial number series.

Smith & Wesson, .38/44 Outdoorsman & Heavy Duty, caliber .38, serial numbers 36500 to 62023 (no letter).

Smith & Wesson 150th Anniversary Texas Ranger Commemorative Model 19 revolver.

Smith & Wesson, U.S. Army Model of 1917, caliber .45, serial numbers 1 to 163476.

Standard Arms Co., rifle/shotgun combination, U.S., Model "Camp," slide action caliber .50.

Standard Arms Co., rifle Model G, slide action or gas operated, caliber unknown.

Standard Arms Co., rifle Model M, slide action caliber .25-.35, .30 Rem. and .35 Rem.

Star Model B semiautomatic pistol, caliber 9mm Parabellum, having German military acceptance marks and in the serial number range 21597 through 249687.

Steyr-Hahn M1912, pistol, caliber 9mm Steyr.

Steyr-Hahn M1912, pistol, caliber 9mm Parabellum marked with Third Reich police acceptance stamps of Eagle C, F, K or L.

Sosso pistols manufactured by Guilio Sosso, Turin, Italy, or Fabrica Nationale D'Armi, Brescea Italy, caliber 9mm.

Tauler Model military and police pistol.

Tokagypt 58, pistol, caliber 9mm Parabellum.

Unique Model 17 pistol, French manufacture, caliber 7.65mm bearing German Waffenamt acceptance stamp for period of 1939-1945.

Unique Kriegsmodell pistol, French manufacture, caliber 7.65mm, bearing German Waffenamt acceptance stamp for period 1939-1945.

U.S. Model 1911 semiautomatic pistol, military series, caliber .45, serial-number range from 1 to 629500, all original variations regardless of manufacture including: The North American Arms Company, Model 1911; the Springfield Armory, Model 1911 with NRA markings; the Remington Arms-UMC, Model 1911; and any Model 1911 cutaways.

U.S. pistols, Model 1911-A1, caliber .45, manufactured by the Singer Manufacturing Company in 1942, serial-number range from S800001 to S800500.

U.S. Model 1911-A1 semiautomatic pistol, caliber .45, manufactured by Remington Rand, bearing serial number prefix of ERRS.

U.S. Model 1911-A1 semiautomatic pistol, caliber .45, produced as original factory cutaways.

U.S. Rifle, caliber .30 MC-1952, equipped with telescopic sight mount MC, telescopic sight MC1, marked U.S.M.C. or kollmorgan.

Walther pistols, Manufactured at Zella-Mehlis prior to 1946, all models any caliber.

Webley Model 1909, pistol, caliber 9mm Browning Long.

Webley and Scott, Model 1910 and 1913 high velocity pistols, caliber .38 ACP.

Webley and Scott, M1913, Navy or Commercial, self-loading pistol, caliber .455.

Webley-Fosbury, semiautomatic revolvers, all calibers, all models.

Winchester 1980 Alberta Diamond Jubilee Commemorative carbines, Model 94, in caliber .38/55.

Winchester Alaskan Purchase Centennial, Model 1894, carbine.

Winchester Antlered Game Commemorative, Model 94, carbine, caliber .30-30.

Winchester Apache Commemorative carbine, commemorative edition of Model 1894 Winchester with serial number prefix of AC.

Winchester Bicentennial 76, Model 94 carbine.

Winchester Buffalo Bill, Model 1894, carbine.

Winchester Buffalo Bill, Model 1894, Rifle.

Winchester Canadian 1967, Centennial Model 1894, carbine.

Winchester Canadian 1967, Centennial Model 1894, Rifle.

Winchester Centennial, Model 1866, carbine.

Winchester Centennial, Model 1866, Rifle.

Winchester Comanche Commemorative carbine, commemorative edition of Model 1894 Winchester with serial number prefix of CC.

Winchester Cowboy Commemorative, Model 94, carbine.

Winchester Golden Spike, Model 1894, carbine.

Winchester Illinois Sesquicentennial, Model 1894, carbine.

Winchester Klondike Gold Rush Commemorative Model 94, carbine.

Winchester Legendary Lawman Commemorative, Model 94, carbine, caliber .30-30.

Winchester Legendary Frontiersman Model 94 rifle, caliber .38-55.

Winchester "Limited Edition II" Model 94 rifle, caliber .30-30.

Winchester Little Big Horn Centennial, Model 94, carbine.

Winchester Lone Star Commemorative, Model 94, carbine.

Winchester Lone Star Commemorative, rifle, Model 94, .30-30.

Winchester "Ducks Unlimited" shotgun, Model 12, bearing serial numbers DU-001 through DU-800 (Commemorative).

Winchester "Matched Set of 1000," a cased pair consisting of a Winchester Model 94 rifle, caliber .30-30 and a Winchester Model 9422 rifle, caliber .22.

Winchester Model 52, rifle, bearing serial numbers 1 to 6,500.

Winchester Model 53, all original, manufactured from 1924 to 1947 with 16 inch or longer barrel, and 26 inch or longer overall length.

Winchester Model 54, rifle, speed lock variation, caliber .270.

Winchester Model 65, all original, manufactured from 1933 to 1947 with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Model 70 Ultra Match Target Special Grade rifle, caliber .308.

Winchester Model 71, all original, manufactured from 1936 to 1958, with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Limited Edition, Model 94 carbine, caliber .30-30, serial numbers 77L1 through 77L1500.

Winchester Model 1873, all original, manufactured from 1899 to 1925, with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Model 1885 (single shot rifle), all original, manufactured from 1899 to 1920, with 16 inch or longer barrel, and 26 inch or longer overall length.

Winchester Model 1886, all original, manufactured from 1899 to 1935, with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Model 1892, all original, manufactured from 1899 to 1947, with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Model 1894 rifles and carbines manufactured prior to January 2, 1964, and having a serial number of less than 2,700,000, provided their barrel length is at least 16 inches and their overall length at least 26 inches.

Winchester Model 1895, all original manufactured from 1899 to 1938, with 16 inch or longer barrel and 26 inch or longer overall length.

Winchester Nebraska Centennial, Model 1894, carbine.

Winchester NRA Centennial rifle, Model 94, .30-30.

Winchester Model NRA Centennial, Model 94 carbine.

Winchester Mounted Police, Model 94, carbine.

Winchester Northwest Territories Centennial rifle.

Winchester rifle, Model 70, caliber .308 rifle, 19 inch barrel and Mannlicher type stock, made from 1968 to 1971.

Winchester Royal Canadian Mounted Police Centennial, Model 94 carbine.

Winchester 150th Anniversary Texas Ranger Commemorative, Model 1894, carbine.

Winchester Theodore Roosevelt, Model 1894, carbine.

Winchester Theodore Roosevelt, Model 1894, Rifle.
Winchester Wells Fargo and Company Commemorative, Model 94 carbines.
Winchester Wyoming Diamond Jubilee, Model 94 carbine.
Winchester Yellow Boy Indian, Model 94 carbine.

ATF Ruling 79-13, ATFB 1979-2, 10 is superseded.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

(Also 178.11)

Certain ammunition is classified as curios or relics. ATF Ruling 79-14 superseded.

ATF Rul. 80-10

The Bureau of Alcohol, Tobacco and Firearms has been asked to determine whether certain ammunition may be classified as curios or relics.

With respect to ammunition 27 CFR 178.11 defines curios or relics as ammunition having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with ammunition intended for sporting use or in offensive or defensive weapons. The Bureau has determined that the following ammunition is a curio or relic as defined in 27 CFR 178.11 because it falls within one of the categories specified in the regulations.

Such determination merely classifies the ammunition as curios or relics and thereby authorizes licensed collectors to acquire, hold or dispose of them as curios or relics, subject to the provisions of 18 U.S.C. Chapter 44 and the regulations in 27 CFR Part 178. They are still "ammunition" as defined in 18 U.S.C. 921(a)(17).

1. Foreign Military Rifle Cartridges
   - 7.65mm Argentine Navy Match
   - 7.92mm anti-tank cartridge for the Polish (Marosczek) anti-tank rifle described as a caliber 7.92mm, Gr 39 Granatbuchse.
   - 7.92mm anti-tank cartridge for the German PzB 38, PzB 39, and Gr 39 anti-tank rifle.
   - 8 X 60mm Guedes M85 Portuguese
   - 8 X 53mm Japanese Murata
   - 9.5 X 60mm Turkish Mauser
   - 10.15 X 61mm Jarman
   - 10.15 X 63mm Serbian Mauser
   - 10.75 X 58mm Russian Berdan
   - 11 X 50mm Belgian Albini M67/72
   - 11 X 53mm Belgian Comblain M71
   - 11 X 60mm Japanese Murata
   - 11.15 X 58mm (.43) Spanish Remington
   - 11.15 X 58mm Austrian Werndl M77
   - 11 X 59 French Gras
   - 11.43 X 55mm Turkish
   - 11.43 X 50mm (.43) Egyptian Remington
   - 11.4 X 50mm Austrian Werndl M73
   - 11.4 X 50mm Brazilian Comblain M74
   - 11.5 X 57mm (.43) Spanish Reformado
   - 11.7 X 51mm Danish Remington
   - 11 X 52mm Netherlands Beaumont M71/78
   - 11.3 X 50mm Beaumont M71
   - 12.11 X 44mm Remington M67 (Norway & Sweden)

2. European Sporting Rifle Cartridges
   - 6 X 29.5mm Stahl
   - 6 X 57mm Mauser
   - 6 X 58 Forester (Rimless and Rimmed)
   - 6.5 X 27mm
   - 6.5 X 53.5mm Daudeteau
   - 6.5 X 48mm Sauer
   - 7.7 X 60mm
   - 8 X 48mm Sauer
   - 8 X 51mm Mauser
   - 8 X 42mm
   - 8 X 71mm Peterlongo

8 X 75mm (Rimmed and Rimless)
8 X 58mm Sauer
9 X 70mm Mauser
9 X 71mm Peterlongo
9.1 X 40mm
9.3 X 53mm Swiss
9.3 X 53mm Collath
9.3 X 72mm Sauer
9.3 X 54mm Hebler
9.5 X 47mm
9.5 X 73mm Miller Greiss Magnum
10.25 X 69mm Hunter-Express
10.5 X 47mm
10.75 X 57mm
10.75 X 63mm Mauser
10.75 X 65mm Collath
10.8 X 47mm Martini

3. British Sporting Rifle Cartridges
.255 Rook Rifle
.375/.303 Axite
.400/.360 Purdey Flanged
.400/.360 Wesley Richards
.360 No. 2 Nitro Express
.369 Purdey Nitro Express
.375 Rimless Wesley Richards Nitro
.450 Nitro Express
.450 No. 2 Nitro Express
.450 Black Powder Express
.450 Nitro for Black Powder Express
.475 No. 2 Jeffery
.476 Nitro Express
.500 Black Powder Express
.600 Nitro Express

4. Pistol and Revolver Cartridges
2.7mm Kolibri Auto
3mm Kolibri Auto
4.25mm Liliput Auto
5mm Clement Auto
5mm Bergmann
5.5 Velo Dog Short
6.5mm Bergmann (Without extractor groove)
6.5mm Bergmann, standard rimless
7mm Baby Nambu
.30/7.65mm Borchardt
7.65mm Roth-Sauer
.35 Smith & Wesson Auto
.38 Long Colt
9.8 Auto Colt
.44 Smith & Wesson (Martin Primer)
.44 Colt-Remington (Martin Primer)
11mm German Service Revolver
11mm French Ordnance Revolver
11.75mm Montenegrin Revolver
.450 Long Revolver
.50 Remington (M71 Army)
.577 Pistol

5. U.S. Rimfire Cartridges
.22 Rimfire caliber cartridges with experimental aluminum or steel cartridge cases
.25 Short
.267 Rimfire caliber government experimental cartridge manufactured by Remington
.30 Short
.30 Long
.32 Extra Short
.32 Long Rifle
.32 Extra Long
.35 Allen
.38 Extra Long
.41 Long
.44 Short
.44 Long
.44 Extra Long
.46 Short
.46 Long
.46 Extra Long
.50 Remington Navy
.50 Peabody Musket
.50-70 Government
.52-70 Sharps
.54 Ballard
.56-46 Spencer
.56-50 Spencer
.56-52 Spencer, Tapered
.56-52 Spencer, Bottleneck
.56-56 Spencer
.58 Joslyn Carbine
.58 Miller
.58 Gatling Gun
.58 Mont Storm (Also known as .61 Caliber)

6. U.S. Centerfire Rifle Cartridges
.22 Extra Long (Maynard)

.22-15-60 Stevens
.22 Newton (Wildcat)
.25-21 Stevens
.25-25 Stevens
.25-36 Marlin
.28 caliber centerfire experimental, manufactured at Frankford Arsenal
.28-30-120 Stevens
.30-03 Government (Note: Also known as Springfield)
.30-06 Commemorative, commemorating 50 years of the .30-06 cartridge as the standard U.S. service cartridge (Headstamped USFA 1906-56)
.30-06 caliber cartridges manufactured by commercial manufacturers under government contract with headstamps indicating use for Palma Matches.
.30-30 Wesson
.30-40 Wesson
Winchester "Bicentennial 76," caliber .30-30 Super X
.308 Winchester, marked "Palma Match"
.32 Long Rifle
.32 Ballard Extra Long
.32-30 Remington
.32 Winchester Self Loading
.32-35 Stevens
.32-35 Maynard
.32-40 Remington
.32-40 Bullard
.32-30 Maynard 1882
.35 Winchester Self Loading
.35-40 Maynard
.38 Long
.38 Ballard Extra Long
.38-35 Stevens
.38-40 Remington-Hepburn
.38-45 Bullard
.38-45 Stevens
.38-50 Maynard
.38-50 Ballard
.38-50 Remington-Hepburn
.38-70 Winchester
.38-90 Winchester Express
.40 Martin Primed
.40-40 Maynard 1882
.40-50 Sharps (Straight)
.40-50 Sharps (Necked)
.40-60 Maynard 1882
.40-60 Marlin
.40-63 Ballard
.40-65 Ballard Everlasting
.40-70 Ballard
.40-70 Maynard
.40-70 Peabody "What Cheer"
.40-70 Winchester
.40-70 Sharps (Straight)
.40-70 Sharps (Necked)
.40-70 Remington
.40-75 Bullard
.40-85 Ballard
.40-90 Ballard
.40-90 Bullard
.40-90 Sharps (Necked)
.40-90 Sharps (Straight)
.40-90 Peabody "What Cheer"
.40-110 Winchester Express
.42 Martin Primer
.44 Henry
.44 Evans Short
.44 Evans Long
.44 Long C.F.
.44 Extra Long Ballard
.44 Wesson Extra Long
.44-40 Extra Long
.44-60 Peabody "Creedmoor"
.44-60 Winchester
.44-60 Sharps (Necked)
.44-70 Maynard
.44-75 Ballard Everlasting
.44-77 Sharps
.44-77 Remington
.44-85 Wesson
.44-90 Remington (Straight 2-6/10 inch case)
.44-90 Sharps (Necked)
.44-90 Remington (Straight)
.44-95 Peabody "What Cheer"
.44-100 Ballard
.44-100 Remington "Creedmoor" (Straight 2-6/10 inch case)
.44-100 Wesson
.45-50 Peabody (Sporting)

.45-70 Van Choate
.45-75 Sharps (Straight) Note: Identical to .45-70 Govt. Cartridge
.45-78-475 Wolcott
.45-80 Sharpshooter
.45-100 Ballard
.45-100 Sharps (Straight)
.45-100 Remington
.45-120 Sharps (Straight, 3¼ inch case)
.45-125 Winchester
.50 caliber experimental machine gun cartridge with aluminum cartridge case
.50-50 Maynard
.50 U.S. Carbine
.50 Government
.50 Remington
.50-70 Musket
.50-90 Sharps
.50-95 Winchester
.50-100 Sharps
.50-110 Sharps
.50-115 Bullard
.50-140 Sharps
.50-140 Winchester Express
.55-100 Maynard
.58 U.S. Musket (Berdan)
.58 Berdan Carbine
.60 Caliber experimental cartridge
.70-150 Winchester

7. Miscellaneous Cartridges
   Duplex cartridges in all calibers with the exception of 7.62mm NATO
   All cartridges intended for use in "squeeze bore" firearms e.g. Gerlach taper bore ammunition
   Dardick cartridges (Trounds) in all calibers

ATF Ruling 79-14, ATFB 1979-2, 22 is superseded.

27 CFR 179.11: MEANING OF TERMS

(Also 178.11, 178.26)

Certain NFA firearms removed from the Act and determined to be collectors items classified as curios or relics. ATF Ruling 79-15 superseded.

ATF Rul. 80-11

The Bureau of Alcohol, Tobacco and Firearms has been asked to determine whether certain firearms classified as "firearms" under the National Firearms Act (26 U.S.C. Chapter 53) may be removed from that classification because they are collectors items and not likely to be used as weapons, and whether such firearms may also be classified as curios or relics under the provisions of 18 U.S.C. Chapter 44.

The National Firearms Act, in definitions given in 26 U.S.C. 5845 and 27 CFR 179.11, provides that the term firearms shall not include any device (other than a machinegun or destructive device) which, although, designed as a weapon, the Director, finds by reason of the date of its manufacture, value, design and other characteristics is primarily a collector's item and is not likely to be used as a weapon. Further, under 27 CFR 178.11 implementing 18 U.S.C. Chapter 44, to be recognized as a curio or relic a firearm must fall within one of three categories.

The Bureau has determined that by reason of the date of their manufacture, value, design and other characteristics, the following firearms are primarily collectors items and are not likely to be used as weapons and, therefore, are excluded from the provisions of the National Firearms Act.

Further, the Bureau has determined that such firearms are also curios or relics as defined in 27 CFR 178.11. Thus, licensed collectors may acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and 27 CFR Part 178. They are still "firearms" as defined in 18 U.S.C. 921(a)(3).

PLEASE NOTE:

It is requested that persons having any of these exempted firearms registered with the Bureau of Alcohol, Tobacco and Firearms notify our NFA Branch at the following address so that the National Firearms Registration and Transfer Record can be annotated to show that the particular firearms no longer require registration.

NFA Branch
Bureau of Alcohol, Tobacco and Firearms
1200 Pennsylvania Avenue
Washington, DC 20226

Astra, Model 900 semiautomatic pistol, caliber 7.63 x 25mm (.30 Mauser) having an integral 10 round magazine, 5½ inch (140mm) barrel, and accompanied by an original Spanish manufactured detachable holster/stock.

Astra, Model 902 semiautomatic pistol, caliber 7.63mm, having an integral 20 round magazine, 7 inch barrel and accompanied by an original Spanish detachable holster/stock employing a leather flap designed to protect the protruding portion of the 20 round magazine on the Model 902 pistol.

Astra, Model 1921, semiautomatic pistol, with Benke-Thiemann folding shoulder stock.

Azul, semiautomatic pistol, Caliber 7.63 x 25mm (.30 Mauser) having an integral 10 round or detachable 20 round magazine, 5½ inch or 7 inch barrel, and accompanied by an original Spanish manufactured detachable holster/stock.

Pre-war Belgian manufactured Hi-Power pistols, in caliber 9mm having tangent sights graduated to 500 meters, slotted for shoulder stock, having serial numbers of less than 47,000 without letter prefixes or suffixes and accompanied by original Belgian manufactured detachable wooden flat board type shoulder stocks.

Beretta Model 1918/1930 semiautomatic carbine, caliber 9mm, having a barrel length of 12.5 inches and a magazine capacity of 25 rounds.

Beretta Model 1923 semiautomatic pistol, in caliber 9mm Kurz (.380), accompanied by original Italian detachable leather and metal holster/shoulder stock.

Bergmann-Bayard Pistol, Model 1908, 9mm Bergmann-Bayard with shoulder stock and 4 inch barrel.

Bergmann self-loading pistol, Mars Model 1903, with accompanying shoulder stock.

Blue Jacket Revolver with Shoulder Stock (Veterinarians's Pistol) Serial Number IRS-3600 Caliber .22 Rimfire. Marked Blue Jacket Patented 3-28-1871, 10-1-1876 and 1877, made by W Vurflein, Philadelphia.

Browning Pistol, Model 1903, 9mm Browning Long, with shoulder stock and 5 inch barrel.

Canadian Inglis No. I, Chinese Contract, Hi-Power pistols, caliber 9mm Parabellum, having a tangent rear sight adjustable from 50 to 500 meters, slotted for shoulder stock, and having the letters CH in the serial number and accompanied by original Canadian manufactured detachable wooden holster/shoulder stock.

Clement Pistol Carbine, Caliber 9mm.

Colt Pistol, Model 1905, .45 rimless, with leather holster/shoulder stock and 5 inch barrel.

Colt Officers Model, .38 Special caliber, double action revolver, with 6 inch barrel and a detachable, experimental skeleton shoulder stock and holster combination.

Colt Model Woodsman, .22 Long Rifle caliber, semiautomatic pistol with an experimental 10 inch barrel and an experimental wooden detachable shoulder stock.

Colt Model Woodsman, .22 Long Rifle caliber, semiautomatic pistols, manufactured between 1915 and 1943, together with the original leather detachable holster stocks, manufactured by the N&S Corporation, Ventura, California.

Czechoslovakian Model CZ24 semiautomatic pistol, in caliber 9mm Kurz (.380) accompanied by original Czechoslovakian detachable wooden holster/shoulder stock.

Fiala Model 1920 repeating pistol, caliber .22LR in all barrel lengths with accompanying detachable shoulder stock; original copies of the Fiala repeating pistol, marked Schall, Columbia or Botwinick Brothers, caliber .22LR, with accompanying original detachable shoulder stock.

Finnish Model L-35 Lahti Semiautomatic pistol, in caliber 9mm Parabellum, accompanied by original Finnish detachable wooden holster/shoulder stock.

Frommer Model 1912, semiautomatic pistol with Benke-Thiemann folding shoulder stock.

German (WWI) antitank rifle (Pz Agew 1918), Model 1918, caliber 13.25mm.

German (Nazi) Belt Buckle Gun, .22 rimfire, marked "DRP Ausl Pat, Louis Marquis, W. Elberfeld."

German (Nazi) Belt Buckle Gun, 7.65mm, marked "D.R.P. Angem."

German VG1-5 (Volksgewehr) semiautomatic rifle, caliber 7.92mm Kurz, having a barrel length of 14.9 inches and an overall length of 34.8 inches.

Greener Cattle Killer (Original Model) No. B1201, .310 caliber.

Greener Cattle Killer (Pocket Pattern) No. B1203, .310 caliber.

Greener Safti Killer No. B1216, .22 caliber.

Greener Universal Safti Killer No. B1217, .310 caliber.

Hamilton Model 7, Rifle.

Hamilton Model 11, Rifle.

Hamilton Model 15, Rifle.

Hamilton Model 19, Rifle.

Hamilton Model 23, Rifle.

Hamilton Model 27 and 027, Rifle.

Hamilton Model 31, Rifle.

Hamilton Model 35, Rifle.

Hamilton Model 39, Rifle.

Hamilton Model 43, Rifle.

Heal Rifle No. 10, caliber .22.

High Standard Model C/S smoothbore .22 caliber shot semiautomatic pistols, bearing serial number 59279, 59473, 59478, or 59460.

High Standard Model S smoothbore .22 caliber shot semiautomatic pistols having slides marked: "HI-STANDARD MODEL "S" .22 L.R. SHOT ONLY," and bearing serial numbers 48142, 48143, 48144, 48145, 48146, 59474, 59496, or 59458.

"JGA" (J. G. Anchutz, Ulm, Germany), .22 Flobert single shot pistol.

Luger, Artillery Model pistols having chamber dates of 1914 through 1918 plus the date 1920, having German Weimar Navy markings consisting of the letter M over an anchor and a German Navy property number accompanied by original Artillery Luger flat board stocks, bearing German Weimar Navy markings of the letter M over an anchor with or without Navy property numbers.

Luger, the 1920 Commercial Artillery Model, pistols as manufactured by DWM or Erfurt, having undated chambers, commercial proofmarks, and bearing the inscription Germany or Made in Germany on the receiver and accompanied by original, German manufactured, artillery type, detachable wooden shoulder stocks.

Luger DWM Pistol, Model 1900, 1902, or 1906, in 7.65 Luger or 9mm Parabellum caliber, having the American Eagle chamber crest, and barrel lengths of either 4 inches or 4¾ inches with original detachable Ideal shoulder stocks and Ideal frame grips.

Original Models 1904, 1906, 1908, 1914 and 1920 DWM Luger Naval pistols in 9mm Parabellum or 7.65 mm caliber, in both the Commercial and Naval military variations; in both altered and unaltered barrel lengths in the Model 1904 and in both altered and unaltered safety markings in the Model 1906; with original board-type detachable shoulder stocks bearing brass or iron discs, with or without markings, or, if without brass or iron discs, being of the Navy flat board-type. This exemption will apply only to the listed Naval Luger pistols if mated to the Naval Luger stock and will not apply if the Naval Luger pistol is mated to the Artillery stock. The Naval stock has an overall dimension of 12¾ inches, a rear width of 4⅝ inches, a front width of 1½ inches, a rear thickness of $^9/_{16}$ inch, and a front thickness of $1^3/_{16}$ inches.

Luger DWM Stoeger Model 1920 and 1923 semiautomatic pistols in 7.65 mm or 9mm Parabellum caliber, in barrel lengths of 8, 10, 12, and 12½ inches, having either American Eagle chamber crests and/or Stoeger frame and/or upper receiver marks, having either standard, Navy or artillery rear sights, having extractors marked either "Loaded" or "Geladen" and having frame safety markings of either "Gesichert" or "Safe," together with original commercial flat board stocks of the artillery type, which bear no serial numbers or military proof marks; may include a "Germany" marking.

Luger DWM Pistol-Carbine, Model 1920, 7.65mm or 9mm Parabellum caliber, with accompanying original commercial type shoulder stock, with or without forearm piece, having barrel lengths of 11¾ inches to less than 16 inches.

Luger, German Model 1914 Artillery Model pistol, manufactured by DWM or Erfurt, having chambers dated 1914 through 1918, bearing Imperial German military proofmarks and accompanied by original, German manufactured, artillery type, detachable wooden shoulder stocks.

Luger Pistol-Carbine, Model 1902, 7.65mm Luger with original commercial type shoulder stock and forearm and 11¾ inch barrel.

Luger pistols, Persian (Iranian) Artillery Model, as manufactured by Mauser prior to 1945, accompanied by the original artillery type, detachable wooden shoulder stock, bearing a serial number in Farsi characters stamped into the wood on the left side.

Luger semiautomatic pistol, certain variations with Benke-Thiemann folding shoulder stock.

Luger, Swiss Model 1906, semiautomatic pistol, Serial Number E772, with original attachable shoulder stock known as "Stock System Benke-Thiemann."

Manville, 18-shot-drum, 25mm, semiautomatic tear gas gun.

Marlin, Model 94 carbine, caliber .38-40 WCF, with 15 inch barrel, serial number 384186.

Marlin, Model 93 carbine, caliber .32-40 WCF, with 15 inch barrel, serial number 426311.

Mauser Model 1896 semiautomatic pistol accompanied by original

German manufactured detachable wooden holster/shoulder stocks, all semiautomatic German manufactured variations produced prior to 1940, any caliber.

Mauser Model 1902, 6 and 10-shot magazine capacity, semi-automatic pistols in caliber 7.63 x 25mm (.30 Mauser), having the distinctive hammer safety, barrel lengths of either 3.9 or 5.5 inches, and accompanied by an original detachable wooden holster/shoulder stock.

Mauser Pistol, Model 1912/14, 9mm Mauser short or .45 ACP, with original detachable wooden holster/shoulder stock and 5 inch barrel.

One Pocket Creedmores and other original pocket rifles with extension shoulder stock, caliber .22, made by Samuel Watson Johnson (1838-1903).

Military type Nambu pistol, Model 1904, caliber 8mm Nambu (Riku Shiki Nambu Kenju) with an accompanying original detachable telescoping wooden holster/shoulder stock.

OSS Glove Pistol, caliber .38 S & W or .38 special.

OSS "Liberator" pistol, .45 ACP or 9mm.

Remington Flare (Very) Pistol, Mark III, 10 gauge.

Royal, semiautomatic pistol, Caliber 7.63 x 25mm (.30 Mauser) having an integral 10 or 20 round magazine, 5½ inch, 6¼ inch, or 7⅛ inch barrel, and accompanied by an original Spanish manufactured detachable holster/stock.

Sedgley, Mark V, 10 gauge, signal pistol (Remain Title I).

The Shatuck "Unique" palm gun in .22 and .32 caliber rimfire.

Smith & Wesson Model 40 Light Rifle, caliber 9mm Parabellum.

Spanish Star Model A semiautomatic pistol in calibers 7.63 Mauser, 9mm Parabellum, 9mm Long, .38 ACP and .45 ACP, accompanied by original Spanish manufactured detachable wooden holster/shoulder stock.

Stevens Rifle, No. 20, with smooth bore barrel for .22 and .32 rimfire shot cartridges.

Stevens, Reliable Pocket Rifle, second issue, caliber .22 long rifle or .22 Stevens-Pope.

Stevens, New Model Pocket Rifle, first issue, caliber .22.

Stevens, New Model Pocket Rifle, second issue, caliber: .22 short, long or long rifle rimfire, .22 WRF, .32 long centerfire.

Stevens, New Model Pocket Rifle No. 40, caliber: .22 long rifle, .22 WRF, .22 Stevens-Pope, and .32 long centerfire.

Stevens, Hunter's Pet No. 34 Pocket Rifle, caliber .22 short rimfire to .44-40 WCF.

Stevens, Vernier Hunter's Pet No. 344/2 Pocket Rifle, caliber .22 short to 44-40 WCF.

Stevens, Vernier New Model Pocket Rifle No. 401/2, caliber .22 long rifle, .22 WRF, .22 Stevens-Pope, .32 long centerfire.

Stevens, 1898 New Model Pocket Shotgun, in calibers .38-40 and .44-40.

Stevens Number 39, New Model Pocket Shotgun, in calibers .38-40 and .44-40.

Steyr Hahn Model 1911/12 semiautomatic pistol, caliber 9mm Steyr or 9mm Parabellum having a 5 inch barrel and accompanied by an original European detachable holsterstock.

Swedish Model P-40 Lahti semiautomatic pistol, in caliber 9mm Parabellum, accompanied by original Swedish detachable wooden holster/shoulder stock.

The Taylor "Fur Getter" manufactured by the F.C. Taylor Fur Company, St. Louis, Missouri, .22 caliber rimfire.

U.S. Mark II, 10 gauge signal pistols.

Walther Pistol, Model 1937 "Armee Pistols," 9mm Parabellum, with original detachable shoulder stock and 4.9 inch barrel.

Webley & Scott Pistol, Mark I, No. 2, .455 caliber, with original detachable shoulder stock.

Winchester, Model 1873, carbine, serial number 127884, caliber .44 W.C.F. with original 15-inch barrel.

Winchester, Model 1873, carbine, serial number 382027 caliber .32 W.C.F. with original 15-inch barrel.

Winchester, carbine, Model 1873, serial number 486139, caliber .44 W.C.F. with original 15-inch barrel.

Winchester, Model 1873, carbine, serial number 514709, caliber .38 W.C.F. with original 14-inch barrel.

Winchester, Model 1873, carbine, serial number 92842A, caliber .44 W.C.F. with original 15-inch barrel.

Winchester, Model 92 carbine, serial number 998419, caliber .44-40, with original 15 inch barrel.

Winchester, Model 94 carbine caliber .30-30 WCF, with original 15 inch barrel, serial numbers 273691 and 758406.

Winchester, Model 1892 carbine, serial number 848873, caliber .38-40, with original 14 inch barrel.

Winchester, Model 1892 carbine, serial number 999398, caliber .44 WCF, with 14 inch barrel.

Winchester, Model 1894 carbine, serial number 360587, caliber .30 WCF, with 15 inch barrel.

Winchester carbine, Model 1892, serial number 51976, caliber .44 W.C.F., with original 15-inch barrel.

Winchester, Model 1894 carbine, serial number 464604, caliber .30 WCF, with 15 inch barrel.

Winchester, Model 1894 carbine, serial number 662192, caliber .30 WCF, with 15 inch barrel.

Winchester, Model 1894 carbine, serial number 938370, caliber .38 WCF, with 15 inch barrel.

Winchester, Model 1892 carbine, serial number 804878, caliber .38 WCF, with 15 inch barrel.

Winchester, Model 1892 carbine, serial number 981212, caliber .44 WCF, with 14 inch barrel.

Winchester, Model 1892 carbine, serial number 988160, caliber .44 WCF, with 15 inch barrel.

Winchester, Model 1894 carbine, serial number 868769, caliber .30 WCF, with 15 inch barrel.

Winchester, Model 1894 carbine, serial number 1072755, caliber .30 WCF with 15 inch barrel.

Winchester Model 1885 single shot rifle, serial number 104783, caliber .25/35, having a 15-inch number 3 round barrel, shotgun butt, plain pistol grip, and Winchester Express sight.

The following firearms were removed from the National Firearms Act as collector's items and classified as curios or relics under 18 U.S.C. Chapter 44. However, since they are antiques as defined in Chapter 44, they should not have been classified as curios or relics. Since they are no longer NFA weapons and are antiques under Chapter 44, they are not subject to GCA provisions.

Belgian Cane Gun, 41 caliber rimfire.

Bergmann Model 1897, caliber 7.65 mm (7.8mm) pistol with accompanying shoulder stock.

Borchardt Model 1893, caliber 7.63 mm pistol with accompanying shoulder stock.

Chicago palm pistol, caliber .32 rimfire extra short.

Frank Wesson Bicycle Rifle with accompanying shoulder stock.

Gaulois palm squeezer, 8mm short.

"Little All Right" palm pistol, .22 caliber rimfire patented by Edward Boardman and Andrew Peavey, January 18, 1876.

Mannlicher Pistol-Carbine, Model 1896, 7.63mm Mannlicher, with rifle type shoulder stock and forearm and 11¾ inch barrel.

Merveilleux squeezer pistol, 6mm and 8mm short.

Peavey, A.J., Knife Gun, .22 short rimfire.

Protector palm gun, .32 rimfire extra short, patented by Jacques Turbiaux, Patent No. 732644.

Quackenbrush Bicycle Rifle with telescopic wire stock, .22 caliber.

Remington Cane Gun, Model 1, .22 rimfire.

Remington Cane Gun, Model 2, .32 rimfire.

Stevens, Old Model Pocket Rifle, caliber .22 short or long rimfire.

Stevens, Reliable Pocket Rifle, first issue, caliber .22 short, long or long rifle.

Stevens, New Model Pocket Rifle, first issue, in caliber .32 short or long rimfire.

Stevens, New Model Pocket Rifle, second issue, in caliber .25 Stevens or .32 long rimfire.

Stevens, New Model Pocket Rifle No. 40, in caliber .25 Stevens or .32 long rimfire.

Stevens, Vernier, New Model Pocket Rifle, caliber .22 short, .22 long rifle, .22 WRF, .32 long rimfire.

Stevens, Vernier New Model Pocket Rifle No. 401/2, in caliber .25 Stevens or .32 long rimfire.

Tribuzio "Squeezer" invented by Catello Tribuzio of Turin, Italy, caliber 8mm short.

Winchester, Model 1873 carbine, serial number 380061, caliber .44 WCF, with 15 inch barrel.

Winchester, Model 1892 carbine, serial number 43844, caliber .38 WCF, with 15 inch barrel.

Winchester, Model 1892 carbine, serial number 158145, caliber .44 WCF, with 15 inch barrel.

Any pistol or revolver, manufactured in or before 1898, originally designed to accept a shoulder stock, and accompanied by an original shoulder stock.

ATF Ruling 79-15, ATFB 1979-2, 26 is superseded.

27 CFR 179.11: MEANING OF TERMS

(Also 178.11, 178.26)

Certain NFA weapons prized by licensed collectors because of their limited availability and historical backgrounds are classified as curios or relics. ATF Ruling 79-16 superseded.

ATF Rul. 80-12

The Bureau of Alcohol, Tobacco and Firearms has been asked to determine whether certain National Firearms Act weapons, prized by licensed collectors for their limited availability and their distinctive markings denoting specfic historical backgrounds, may be classified as curios or relics.

With respect to firearms, 27 CFR 178.11 defines a curio or relic as a firearm having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. The Bureau has determined that the following National Firearms Act weapons are curios or relics as defined in 27 CFR 178.11 because they fall within one of the categories specified in the regulations.

These National Firearms Act weapons classified as curios or relics are still subject to all the controls under the National Firearms Act. However, licensed collectors may acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and 27 CFR Part 178. They are still "firearms" as defined in the National Firearms Act and 18 U.S.C. 921(a)(3).

Alarm Pistol, serial number IRS-3591, caliber .22 rimfire, marked Patent Pending about 1883, which rings an alarm bell and also fires a cartridge when set to do so.

Austrian Swartzlose machinegun, Models 1905 and 1907/1912, caliber 8mm.

Belgian made, double barrel, caliber 9mm rimfire, shot pistol with external hammers and 7¾-inch barrels with the words "Foreign" stamped on the barrels.

Benet Mercie machine rifle, Model 1909 (French and American manufacture), caliber 8mm Lebel or .30.

Boys MK1, 0.55 inch anti-tank rifle.

Bren light machineguns, any model, any caliber, British Commonwealth manufacture.

British Lanchester (Lancaster) Mk 1 and Mk 1*, 9mm, submachineguns manufactured in England, during World War II.

British, Projector, Infantry, Antitank (PIAT).

Browning Automatic Rifle (BAR), Models 1918 and modified Model 1918A2, manufactured by Colt, Marlin-Rockwell, and Winchester.

Cane Gun, cane with horn handle, silver tipped, wood covered steel, breech loading, smooth bore barrel, serial number IRS-5834, caliber .32 centerfire.

Cane Gun, English walking stick, bamboo covered steel rifled barrel and horn handle, serial number IRS-3589, caliber .38 centerfire.

Cane Gun, serial number IRS-3587, caliber .410 centerfire.

Chinese Type 24 (Maxim) machinegun, caliber 7.92mm, Chinese manufacture.

Chinese Type 26 light machinegun.

Colt machinegun, Model 1895, any caliber.

Colt machinegun, Model 1914, any caliber.

Colt, Model MG38 and MG38B, water-cooled machinegun, any caliber, manufactured by Colt.

Colt, Monitor Model machine rifle, caliber 30-06, commercial version of the BAR, 18 inch barrel, vertical pistol grip, Cutts compensator, manufactured by Colt.

Czechoslovakian Model ZB 26 and ZB 30 light machinegun.

Danish Madsen machineguns, all models produced prior to 1946, all calibers.

Degtyarov-PTRD 1941, 14.5mm antitank rifle.

Enfield military bolt action rifle cut-a-ways, having barrels or less than 16 inches.

French Chatellerault model 1924/29 machineguns, caliber 7.5mm.

French C.S.R.G. (Chauchat) machinegun, Model 1915, caliber 8mm Lebel.

French C.S.R.G. (Chauchat) machinegun, Model 1918, caliber .30.

French, Model 37, 50mm (1.97 in.) mortar—also designated as a German, Model 203(f), 5cm (1.97 in.) mortar.

French Model 1934 M39 (Mle 34 K39) caliber 7.5 x 54mm, aircraft machinegun.

French St. Etienne machinegun, Model 1907, caliber 8mm Lebel.

Finnish Tampella (original), Model 1938, caliber 81mm mortars.

German anti-tank rifle, caliber 7.92 mm, Gr 39, Granatbuchse.

German Bergmann model 1915 n/a air-cooled machinegun, caliber 7.92 mm.

German Bergmann model 1915 water-cooled machinegun, caliber 7.92mm.

German, Bergmann, MP-34, 9mm, machine pistol.

German, Bergmann, MP-35/I, 9mm, machine pistol.

German Dreyse model 1918 water-cooled machinegun, caliber 7.92 mm.

German, Erma (EMP), 9mm, machine pistol.

German Gast machinegun, caliber 7.9mm.

German FG42 Parachutists rifle, caliber 7.92mm, manufactured prior to 1946.

German Parabellum machinegun, Models 1913, 1914 and LMG 14/17, caliber 7.9mm.

German Raketenpanzerbuchse 43 (8.8 cm, RPzB43), German Model 43, 88mm Rocket Launcher.

German Raketenpanzerbuchse 54 (8.8 cm, RPzB54), German Model 54, 88mm Rocket Launcher.

German, Schmaisser, MP-28/II, 9 mm, machine pistol.

German, Steyer-Solothurn, 9mm, machine pistol.

German submachinegun, Model MP 18-1, caliber 9mm Parabellum.

German MG 34 light machinegun, caliber 7.92mm.

German MP38 submachinegun, caliber 9mm Parabellum, manufactured by B. Geipel (Erma) prior to 1941.

German MP40 submachineguns, caliber 9mm, manufactured from 1940 through 1945 for the German military forces.

German MG 42 light machinegun, produced prior to 1946, caliber 7.92 mm.

Harrington & Richardson (H & R), .410 gauge, "Handy Gun," with a 12¼ inch barrel.

High Standard USA Model HD, .22 lr caliber pistols, originally equipped with silencers for issue to the OSS and other military agencies, serial number range from 109110 through 153890.

Hotchkiss light machinegun, British Model 1909 Mark 1 and Mark 1*, caliber .303.

Hotchkiss Models 1897, 1900 and 1914 machineguns of French manufacture in all calibers.

Italian Breda Model 1930 machineguns, all calibers.

Italian Breda Model 1937 heavy machinegun, caliber 8mm.

Italian Fiat Revelli Model 1935 machinegun, caliber 8mm.

Italian Revelli Model 1914 machinegun, caliber 6.5mm.

Italian Villar Perosa submachinegun, Model 1915, 1916, and 1917, caliber 9mm Parabellum.

Ithaca "Auto and Burglar Guns," manufactured by Ithaca Gun Company from 1922 to 1933, all original guns.

Japanese experimental submachinegun "Bullpup" caliber 8mm Nambu.

Japanese (Model 1921 Browning Type), aircraft fixed machinegun, caliber 12.7mm.

Japanese, modified Bergmann (SIC), submachinegun, caliber 7.63mm, featuring bayonet mounting lug.

Japanese, Type 1 (1941), aircraft flexible machinegun, caliber 7.92mm, twin barrel type.

Japanese, Type 3 (1927), heavy machinegun, caliber 6.5mm.

Japanese, Type 10, 50mm Grenade Discharger (Knee Mortar) and variations thereof.

Japanese, Type 11 (1922) light machinegun, all variations caliber 6.5 mm.

Japanese, Type 38, (1905), machinegun (Hotchkiss) caliber 6.5mm.

Japanese, Type 89, 50mm Grenade Discharger (Knee Mortar) and variations thereof.

Japanese, Type 91 (1931), tank machinegun (modified Type 11), caliber 6.5mm.

Japanese, Type 92 (1932), heavy machinegun, Hotchkiss pattern, caliber 7.7mm.

Japanese, Type 92 (1932), light machinegun or aircraft machinegun, Lewis pattern, caliber 7.7mm.

Japanese, Type 92 (1932), tank machinegun, caliber 13.2mm.

Japanese Type 93 (1938), aircraft machinegun caliber 7.29mm.

Japanese, Type 96 (1936), light machinegun, caliber 6.5mm.

Japanese, Type 97 (1937), tank machinegun, caliber 7.7mm.

Japanese, Type 99 (1939), light machinegun, caliber 7.7mm.

Japanese, Type 99 (1939), Paratrooper model, light machinegun, caliber 7.7mm, featuring detachable butt stock and folding pistol grip.

Japanese, Type 100 (1940), aircraft flexible machinegun, caliber 7.92 mm, twin barrel type.

Japanese, Type 100, submachinegun, caliber 8mm Nambu, all variations.

Lahti Model 39, caliber 20mm antitank rifle.

Lewis Light machinegun (American or British manufacture), caliber .303 or .30.

M2 Browning .30 caliber machineguns (AN-M2), as manufactured by various U.S. Government contractors prior to and during World War II.

Marlin aircraft machinegun, Models 1917 and 1918, caliber .30.

Marlin tank machineguns, Model 1918, caliber .30.

Mauser manufactured Schnellfeuer selective fire pistols and all original prototypes, caliber 7.63mm Mauser.

Maxim machineguns of German manufacture, all models, all calibers.

Maxim machineguns produced by Maxim Nordenfeldt and Vickers Sons and Maxim from approximately 1885 through 1908, all calibers.

Maxim machineguns, Russian Model 1905, Russian manufacture having a brass water jacket in caliber 7.62 mm, Russian rimmed.

Pipe Pistol, serial number 420, caliber .22 rimfire (word "pipe" means smoking tobacco type).

Pipe Pistol, serial number IRS-3579, caliber 7mm centerfire, marked drgm Bucksom (word "pipe" means smoking tobacco type).

Russian Degtyarev machineguns, models DA, DP, DPM, DT, and RP46, caliber 7.62mm.

Russian Model 1910 (Maxim) machinegun, any caliber, Russian manufacture.

Russian 50mm Mortar Launcher.

Russian PPSH41, 7.62mm submachineguns and all copies and variations produced in the Communist Bloc countries prior to the mid 1950's.

Russian Model SG43 heavy machinegun, caliber 7.62mm, Russian manufacture.

Sedgley Glove Pistol, .38 centerfire, serial number IRS-3580, single shot, marked MK2S, manufactured by Sedgley, Philadelphia, for the U.S. Marines.

Simonov-PTRS 1941, 14.5mm antitank rifle.

Solothurn Model S18-100, S18-1000, and S18-1100, 20mm semiautomatic, anti-tank rifle.

Stevens, Offhand Number 35, .410 gauge shot pistols.

Stevens, Auto Shot Number 35, .410 gauge shot pistols.

Thompson semiautomatic carbine, Model 1927, caliber .45 ACP.

Thompson submachinegun including all models, prototypes, and variations manufactured by Warner & Swasey, Colt, BSA, and Auto-Ordnance prior to 1938. This does not include weapons manufactured by Savage Arms Company; Auto-Ordnance, Bridgeport, Connecticut; or Auto-Ordnance, West Hurley, New York. In addition, this classification does not include any Thompson submachinegun bearing a serial number higher than number 15,040.

Umbrella Gun, 6 shot pepper box revolver with dagger attachment extending from muzzle, combined with handle and umbrella, serial number 16, caliber .22 rimfire, with markings Brevette PT, manufactured by Marquis de Farbique, France.

United States, 3 inch Anti-tank Gun, Model M-5.

U.S. Browning machineguns (original), caliber .30, M1917 and M1917A1, manufactured by Colt's Pattern Firearms Company, New England Westinghouse Company, Remington Arms-Union Metallic Cartridge Company, Rock Island Arsenal, High Standard Company, Savage Arms Corporation, Buffalo Arms Corporation, Frigidaire, AC Spark Plug, Brown-Lipe-Chappin, Saginaw Steering Gear Division, and Kelsey Hayes Wheel Company.

U.S. Browning Model 1919A4 air-cooled machinegun, produced by various U.S. Government contractors prior to 1946, caliber .30.

U.S. Johnson Models 1941 and 1944 light machineguns, caliber .30.

U.S. Mortar (original), caliber 60 mm, M1 and M2, with mount M2.

U.S. Maxim machinegun, Model 1904, caliber .30.

U.S. Models 1915 and 1918 Vickers machineguns manufactured by Colt in calibers 30/06 or 11mm.

U.S. Model 1917 Marlin ground machinegun, caliber 30/06.

U.S. Model 1917 and 1917A1 water cooled machineguns manufactured by New England Westinghouse or Remington, caliber 30/06.

U.S. Model M1, caliber 2.36 inch Rocket Launcher (Bazooka) and variations thereof.

U.S. Model M9, caliber 2.36 inch Rocket Launcher (Bazooka) and variations thereof.

U.S. Model M18, caliber 2.36 inch Rocket Launcher (Bazooka) and variations thereof.

Vickers commercial water-cooled machinegun, any configuration, any caliber, British manufacture.

Winchester Model 92 Trapper carbines having barrel lengths of less than 16 inches (original Winchester manufacture only).

ATF Ruling 79-16, ATFB 1979-2, 31 is superseded.

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Legislation PART IV

Subpart A—Currently Enacted Legislation

Public Law 96-223
96th Congress, H.R. 3919 [1]
April 2, 1980

An Act to impose a windfall profit tax on domestic crude oil, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Crude Oil Windfall Profit Tax Act of 1980".

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Crude Oil Windfall Profit Tax Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

(c) TABLE OF CONTENTS.—

Sec. 1. Short title; amendment of 1954 Code; table of contents.

* * * * *

TITLE II.—ENERGY CONSERVATION AND PRODUCTION INCENTIVES

* * * * *

SEC. 232. ALCOHOL FUELS.

* * * * *

(e) EXEMPTION FROM DISTILLED SPIRITS RULES.—

(1) IN GENERAL.—Subchapter B of chapter 51 (relating to distilled spirits, wines, and beers) is amended by redesignating section 5181 as section 5182 and by inserting after section 5180 the following new section:

"SEC. 5181. DISTILLED SPIRITS FOR FUEL USE.

"(a) IN GENERAL.—

"(1) PURPOSES FOR WHICH PLANT MAY BE ESTABLISHED.—On such application and bond and in such manner as the Secretary may prescribe by regulation, a person may establish a distilled spirits plant solely for the purpose of—

"(A) producing, processing, and storing, and

"(B) using or distributing,

distilled spirits to be used exclusively for fuel use.

"(2) REGULATIONS.—In prescribing regulations under paragraph (1) and in carrying out the provisions of this section, the Secretary shall, to the greatest extent possible, take steps to—

"(A) expedite all applications;

"(B) establish a minimum bond; and

"(C) generally encourage and promote (through regulation or otherwise) the production of alcohol for fuel purposes.

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[1] This publication of the law, Senate Report No. 96-394, page 50, and House Conference Report No. 96-817, page 51, is restricted to excerpts relating to alcohol fuels. House Report No. 96-304 not published.

"(b) Authority To Exempt.—The Secretary may by regulation provide for the waiver of any provision of this chapter (other than this section or any provision requiring the payment of tax) for any distilled spirits plant described in subsection (a) if the Secretary finds it necessary to carry out the provisions of this section.

"(c) Special Rules for Small Plant Production.—

"(1) Applications.—

"(A) In general.—An application for an operating permit for an eligible distilled spirits plant shall be in such a form and manner, and contain such information, as the Secretary may by regulations prescribe; except that the Secretary shall, to the greatest extent possible, take steps to simplify the application so as to expedite the issuance of such permits.

"(B) Receipt of application.—Within 15 days of receipt of an application under subparagraph (A), the Secretary shall send a written notice of receipt to the applicant, together with a statement as to whether the application meets the requirements of subparagraph (A). If such a notice is not sent and the applicant has a receipt indicating that the Secretary has received an application, paragraph (2) shall apply as if a written notice required by the preceding sentence, together with a statement that the application meets the requirements of subparagraph (A), had been sent on the 15th day after the date the Secretary received the application.

"(C) Multiple applications.—If more than one application is submitted with respect to any eligible distilled spirits plant in any calendar quarter, the provisions of this section shall apply only to the first application submitted with respect to such plant during such quarter. For purposes of the preceding sentence, if a corrected or amended first application is filed, such application shall not be considered as a separate application, and the 15-day period referred to in subparagraph (A) shall commence with receipt of the corrected or amended application.

"(2) Determination.—

"(A) In general.—In any case in which the Secretary under paragraph (1)(B) has notified an applicant of receipt of an application which meets the requirements of paragraph (1)(A), the Secretary shall make a determination as to whether such operating permit is to be issued, and shall notify the applicant of such determination, within 45 days of the date on which notice was sent under paragraph (1)(B).

"(B) Failure to make determination.—If the Secretary has not notified an applicant within the time prescribed under subparagraph (A), the application shall be treated as approved.

"(C) Rejection of application.—If the Secretary determines under subparagraph (A) that a permit should not be issued—

"(i) the Secretary shall include in the notice to the applicant of such determination under subparagraph (A) detailed reasons for such determination, and

"(ii) such determination shall not prejudice any further application for such operating permit.

"(3) Bond.—No bond shall be required for an eligible distilled spirits plant. For purposes of section 5212 and subsection (e)(2) of this section, the premises of an eligible distilled spirits plant shall be treated as bonded premises.

"(4) Eligible distilled spirits plant.—The term 'eligible distilled spirits plant' means a plant which is used to produce distilled spirits exclusively for fuel use and the production from which does not exceed 10,000 proof gallons per year.

"(d) WITHDRAWAL FREE OF TAX.—Distilled spirits produced under this section may be withdrawn free of tax from the bonded premises (and any premises which are not bonded by reason of subsection (c)(3)) of a distilled spirits plant exclusively for fuel use as provided in section 5214(a)(12).

"(e) PROHIBITED WITHDRAWAL, USE, SALE, OR DISPOSITION.—

"(1) IN GENERAL.—Distilled spirits produced under this section shall not be withdrawn, used, sold, or disposed of for other than fuel use.

"(2) RENDERING UNFIT FOR USE.—For protection of the revenue and under such regulations as the Secretary may prescribe, distilled spirits produced under this section shall, before withdrawal from the bonded premises of a distilled spirits plant, be rendered unfit for beverage use by the addition of substances which will not impair the quality of the spirits for fuel use.

"(f) DEFINITION OF DISTILLED SPIRITS.—For purposes of this section, the term 'distilled spirits' does not include distilled spirits produced from petroleum, natural gas, or coal".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 5601(a) (relating to criminal penalties) is amended by adding the word "or" at the end of paragraph (14) and by inserting immediately after paragraph (14) the following new paragraph:

"(15) UNAUTHORIZED WITHDRAWAL, USE, SALE, OR DISTRIBUTION OF DISTILLED SPIRITS FOR FUEL USE.—Withdraws, uses, sells, or otherwise disposes of distilled spirits produced under section 5181 for other than fuel use;".

(B) Section 5214(a) (relating to withdrawal of distilled spirits from bonded premises free of tax) is amended by striking out the period at the end of paragraph (11) and inserting in lieu thereof a semicolon and the word "or" and by adding at the end thereof the following new paragraph:

"(12) free of tax in the case of distilled spirits produced under section 5181."

(C) Section 5004(a)(2)(B) (relating to lien for tax) is amended by striking out "or (11)," and inserting "(11), or (12),".

(D) Section 5005(d) (relating to person liable for tax) is amended by striking out "or (11)," and inserting "(11), or (12),".

(E) Section 221(d) of the Energy Tax Act of 1978 is repealed.

(F) The table of sections for subchapter B of chapter 51 is amended by striking out the item relating to section 5181 and by inserting after section 5180 the following new items:

"Sec. 5181. Distilled spirits for fuel use.

"Sec. 5182. Cross references."

(f) STUDY OF IMPORTED ALCOHOL.—Within 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall furnish to the Committee on Finance of the United States Senate and to the Committee on Ways and Means of the United States House of Representatives recommendations as to what methods, if any, may be used to limit the importing of alcohol into the United States for fuel purposes, including, but not limited to—

(1) denial of the exemption under sections 4081(c) and 4041(k) of the Internal Revenue Code of 1954 or of the credit under section 44E of such Code to fuels produced from imported alcohol,

(2) import quotas and duties on such alcohol, and

(3) strict surveillance of such imports to monitor their effect on the domestic fuel alcohol industry.

(g) REPORTS.—Subsection (c) of section 221 of the Energy Tax Act of 1978 is amended to read as follows:

"(c) REPORTS.—On April 1 of each year, beginning with April 1, 1981, and ending with April 1, 1992, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include—

"(1) a description of the firms engaged in the alcohol fuel industry,

"(2) the amount of alcohol fuel sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels,

"(3) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1954 and the credit allowable under section 44E of such Code and the impact of such revenue loss on the Highway Trust Fund, and

"(4) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels not mixed with alcohol."

(h) EFFECTIVE DATES.—

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(3) DISTILLED SPIRITS PLANTS.—The amendments made by subsection (e) shall take effect on the first day of the first calendar month beginning more than 60 days after the date of the enactment of this Act.

* * * * *

Approved April 2, 1980.

Subpart B—Committee Reports

Senate Report No. 96-394
96th Congress
1st Session

CRUDE OIL WINDFALL PROFIT TAX ACT OF 1979

November 1, 1979

Mr. Long, from the Committee on Finance, submitted the following report to accompany H.R. 3919.[1]

The Committee on Finance, to which was referred the bill (H.R. 3919) to impose a windfall profit tax on domestic crude oil, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill as amended do pass.

* * * * *

4. Exemption From Distilled Spirits Rules for Alcohol Fuel Facilities

(Sec. 236(d) of the bill and secs. 5181, 5601, 5214, 5004 and 5005 of the Code)

Present Law

Present law sets forth a detailed regulatory scheme for distillery plants and persons involved in the production of alcohol. This regulatory scheme applies to the production of alcohol for industrial uses, as well as production for human consumption. The regulatory scheme requires the registration of a distillery and an investigation of the background of the individuals operating the distillery prior to its commencement of business. This scheme also requires approval of the details of plant construction, provides for supervision of production by employees of the Bureau of Alcohol, Tobacco and Firearms, and of bonds requires that a series be obtained by an operator of a distilled spirits plant in order to engage in the production of distilled spirits.

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[1] Public Law 96-223, page 47, and House Conference Report No. 96-817, page 51.

Reasons for Change

The committee intends that producers of alcohol to be used in gasohol should be encouraged to begin commercial production of such alcohol as soon as possible subject to the minimum amount of regulation needed to insure against violation of the alcohol taxes. The bill consequently provides a statutory framework for a reasonable relaxation of the existing regulatory rules in order to facilitate the production of alcohol for fuel purposes.

Explanation of Provision

The committee substitute provides for a special type of distilled spirits plant, that of the fuel producer. Under the substitute these plants may be established for the production of alcohol for fuel purposes only, and distiller may remove the alcohol free of tax from these plants only after rendering it unfit for beverage purposes. In addition, the Secretary would be provided with broad authority to waive or reduce existing regulatory requirements for these new types of plants, such as by allowing simplified application and recordkeeping procedures, and providing reduced control and bonding requirements for small distilled spirits plants which produce alcohol for fuel purposes.

Effective Date

These provisions will become effective on the first day of the first calendar month which begins more than sixty days after the date of enactment.

Revenue Effect

No significant revenue loss is expected from these changes.

House Conference Report
No. 96-817
96th Congress
2d Session

CRUDE OIL WINDFALL PROFIT TAX ACT OF 1980

March 7, 1980

Mr. Ullman, for the committee of conference, submitted the following conference report to accompany H.R. 3919.[1]

The Committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 3919) to impose a windfall profit tax on domestic crude oil, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

* * * * *

59. Regulation of alcohol production

House bill.—No provision.

Senate amendment.—The Senate amendment provides special rules for distilled spirits plants used to produce alcohol for fuel. The Secretary of the Treasury is provided with broad authority to waive or reduce existing regulatory requirements for these new types of plants, such as by allowing simplified application and recordkeeping procedures and providing reduced control and bonding requirements.

The Senate amendment provides an expedited permit application procedure (and no bond) for small producers of alcohol for fuel use. This procedure requires Treasury action within 60 days of the submission of a completed application and provides for automatic approval of applications if Treasury action is delayed. A small producer means a plant that produces no more than 10,000 proof gallons of alcohol per year.

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[1] Public Law 96-223, page 47, and Senate Report No. 96-394, page 50.

Conference agreement.—The conference agreement follows the Senate amendment except for minor language changes.

The conferees intend that these provisions of the conference report not be interpreted as affecting the Treasury Department's authority, under present law, to revoke or suspend permits for distilled spirits plants.[1]

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[1] See Code secs. 5171 and 5271.

Administrative Matters PART V

Subpart A—Administrative and Procedural Practice Regulations

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS — CHAPTER I — BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-70

27 CFR Parts 179, 194, 197, 245, 250, 251, and 252

Special Tax

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule.

SUMMARY: This final rule liberalizes and updates regulations governing payment of special tax, and payment of interest on delinquent or unpaid special tax. Under the amended regulations, special tax may be paid with a single form (Internal Revenue Service Form 11), even though several rates of special tax are involved. Current regulations require separate Forms 11 to be prepared for each rate of special tax involved. The interest rate on special tax which is unpaid on or after February 1, 1978, is updated to reflect the current rate, in accordance with applicable law.

EFFECTIVE DATE: May 21, 1980.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044; (202) 566-7626.

SUPPLEMENTARY INFORMATION: On January 1, 1979, an amended version of Internal Revenue Service Form 11 took effect. Under this form, as amended, taxpayers with multiple locations who wish to pay special tax with a single form may do so, even though they may be subject to several rates of special tax. The former version of Form 11 required taxpayers to submit separate forms for each rate of special tax being paid. Amendment of ATF regulations is necessitated by the amendment of Form 11, because these regulations include instructions for preparation of this form. The amendments do not affect the amount of special tax that is due. Also, separate Forms 11 will still be required if different time periods are involved.

In Revenue Ruling 77-411 (1977-2 C.B. 480), the Commissioner of Internal Revenue announced a reduced interest rate of 6 percent, applicable to special tax which is unpaid on or after February 1, 1978. Later, in Revenue Ruling 79-366, published in Internal Revenue Bulletin No. 1979-45 (Nov. 5, 1979), this interest rate was raised to 12 percent for taxes unpaid on or after February 1, 1980. Consequently, the ATF regulations in 27 CFR Parts 194 and 252 which refer to this interest rate are amended by this document.

In addition to the admendents relating to special tax, the amended sections contain some non-substantive stylistic, terminology, and clarifying changes. Regulations calling for Forms 11 to be filed with IRS district directors (in contradiction with directions printed on the revised form) are corrected to instruct taxpayers to file these forms with the directors of the appropriate IRS service centers.

Because these regulatory amendments are merely procedural and interpretive of the changes relating to special tax already made by the Internal Revenue Service, notice of opportunity for public comment is not required by the Administrative Procedure Act (5 U.S.C. 553). Furthermore, since these changes should be instituted as soon as possible, compliance with the usual 30-day effective date limitation of 5 U.S.C. 553(d) is found to be unnecessary and contrary to the public interest. Consequently, the amendments made by this document shall become effective May 21, 1980.

The drafter of this document was Steven C. Simon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, supervisors and reviewers from both the Bureau and the Office of the Secretary of the Treasury exercised control over development of the regulations, both on matters of substance and style.

These amendments are made under the authority contained in 26 U.S.C. 7805. Accordingly, the regulations in 27 CFR Parts 179, 194, 197, 245, 250, 251, and 252 are amended as follows:

PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Paragraph A. The regulations in 27 CFR Part 179 are amended as follows:

1. Section 179.34 is amended to remove the requirement that a separate Form 11 be filed for each place of business. Since Forms 11 are now filed exclusively with the internal revenue service centers (except for hand carrying), § 179.34 is amended accordingly. As amended, § 179.34 reads as follows:

§ 179.34 Registration, return, and payment of special (occupational) taxes.

(a) *General.* Each person, prior to commencing any business taxable under 26 U.S.C. 5801, shall prepare, sign, and file a return (IRS Form 11), and pay the proper tax. The Form 11 with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business is located. Thereafter, the taxpayer shall file Form 11 and pay the proper tax on or before the 1st day of July each year during which he continues in business. If a person has paid special (occupational) taxes for a taxable year he will be furnished a return (Form 11) which shall be filled out and signed for registration and tax payment for the succeeding taxable year if that person intends to continue in business. Properly completing, signing, and timely filing of a return (Form 11) constitutes compliance with 26 U.S.C. 5802. A person doing business under a style or trade name shall give his own name, followed by his style or trade name. In the case of a partnership, unincorporated association, firm, or company, other than a corporation, its style or trade name shall be given, also the name of each member and his residence address. In the case of a corporation, its style or trade name shall be given, also the name of each responsible officer and his residence address. The class of business, as described in § 179.32, and the period for which special (occupational) tax is due, shall also be stated. The Form 11 shall be signed under penalties of perjury.

(b) *Hand carrying.* Notwithstanding the provisions of this part relating to the filing of returns of Form 11 for special (occupational) tax, such returns which are filed by hand carrying shall be filed with the district director of the internal revenue district in which the taxpayer's principal place of business is located. (68A Stat. 752, as amended (26 U.S.C. 6091))

2. A clarifying amendment is made in § 179.42 to cover the situation where a change of ownership affects a business having more than one location. In this situation, the amended regulations specify that the new return must be filed with the proper IRS official serving the business' principal location. As amended, § 179.42 reads as follows:

§ 179.42 Changes through death of owner.

Whenever any person who has paid special (occupational) tax dies, the surviving spouse or child, or executors or administrators, or other legal representatives, may carry on this business for the remainder of the term for which tax has been paid and at the place (or places) for which the tax was paid, without any additional payment, subject to the following conditions. If the surviving spouse or child, or executor or administrator, or other legal representative of the deceased taxpayer continues the business, such person shall, within 30 days after the date on which the successor begins to carry on the business, file a new return, IRS Form 11, with the director of the service center serving the internal revenue district in which the business is located. If the business has multiple locations, the new return shall be filed with the director of the service center serving the internal revenue district in which the deceased taxpayer's principal place of business is located. The return thus executed shall show the name of the original taxpayer, together with the basis of the succession. (As to liability in case of failure to register, see § 179.49.)

PART 194—LIQUOR DEALERS

Par. B. The regulations in 27 CFR Part 194 are amended as follows:

1. The implied requirement for separate Forms 11 to cover different rates of special tax is removed from § 194.104. As amended, § 194.104 reads as follows:

§ 194.104 Time for filing return.

Every person who intends to engage in a business subject to special tax under the provisions of this part shall, on or before the date such business is commenced, file a special tax return, IRS Form 11, with payment of tax; and every taxpayer who continues into a new tax year a business subject to special tax under the provisions of this part shall file a Form 11 with tax on or before July 1 of the new tax year. A taxpayer subject to special tax for the same period at two or more locations shall file one special tax return, Form 11, prepared as provided in § 194.106, with payment of tax to cover all such locations. If the return and tax are received in the mail and the U.S. postmark on the cover shows that it was deposited in the mail in the United States within the time prescribed for filing in an envelope or other appropriate wrapper which was properly addressed with postage prepaid, the return shall be considered as timely filed. If the postmark is not legible, the sender has the burden of proving the date when the postmark was made. When registered mail is used the date of registration shall be accepted as the postmark date.

(68A Stat. 732 as amended, 749 as amended (26 U.S.C. 6011, 6071); Sec. 201, Pub. L. 85-859, 72 Stat. 1346 as amended (26 U.S.C. 5142))

2. Section 194.106 is amended to eliminate the requirement for separate Forms 11 covering different rates of special tax. As amended, § 194.106 reads as follows:

§ 194.106 Special tax returns.

(a) *General.* Special tax returns shall be made on IRS Form 11, which may be obtained from the director of the service center, from any internal revenue district director, or from an ATF regional office. If a taxpayer files Form 11 as provided in paragraph (c) of this section and thereafter in the period covered thereby starts at one or more locations one or more new businesses, he shall make a return on Form 11 with payment of tax and an attached list showing the name, trade name (if any), and the address of each location covered by the return in the manner prescribed in paragraph (c) of this section. A single return may not cover periods of liability commencing on different days.

(b) *Special tax return covering a single location.* In the case of a special tax return filed for a single location, the taxpayer shall disclose the following information in the spaces provided on the return:

(1) If the dealer is an individual or a corporation, the true name of this individual or corporation.

(2) In the case of a partnership, the true name of every person comprising the partnership.

(3) If a trade name is used, the exact trade name under which the business is conducted, in addition to information required in paragraph (b)(1) or (b)(2) of this section.

(4) The employer identification number (see §§ 194.106a-194.106c).

(5) The exact location of the place of business, by name or number of building and street or, where these do not exist, by some particularization in addition to the post office address.

(6) The kind of liquor business carried on, as classified in §§ 194.23-194.27.

(7) All other information provided for on the form.

(c) *Special tax return covering multiple locations.* In the case of a special tax return filed for multiple locations, the taxpayer shall disclose the following information in the spaces provided on the return:

(1) The name, trade name (if any), and address of his principal place of business, or principal office, in the manner prescribed in paragraphs (b)(1), (b)(2), (b)(3), and (b)(5) of this section.

(2) The employer identification number (see §§ 194.106a-194-106c).

(3) The kind of liquor business carried on, as classified in §§ 194.23-194.27.

(4) The number of locations covered by the return.

(5) All other information provided for on the form.

In addition to the above, the taxpayer shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name, trade name, if any, and address of each location (including taxpayer's principal place of business, or principal office, if subject to special tax) covered by the return. Each address shall be disclosed on the list in the manner prescribed in paragraph (b)(5) of this section. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer as part of the records required by this part.

(68A Stat. 732 as amended, 846 as amended, (26 U.S.C. 6011, 7011); Sec. 1, Pub. L. 87-397, 75 Stat. 828 (26 U.S.C. 6109))

3. The interest rate adjustments announced by the Commissioner of Internal Revenue are reflected by an amendment to § 194.110. As amended, § 194.110 reads as follows:

§ 194.110 Interest on unpaid special tax.

(a) *General.* * * *

(b) *Rates of Interest.* (1) An annual rate of 6 percent shall apply to interest accruing before July 1, 1975.

(2) An annual rate of 9 percent shall apply to interest accruing within the period commencing July 1, 1975, through January 31, 1976.

(3) An annual rate of 7 percent shall apply to interest accruing within the period commencing February 1, 1976, through January 31, 1978.

(4) An annual rate of 6 percent shall apply to interest accruing within the period commencing February 1, 1978, through January 31, 1980.

(5) An annual rate of 12 percent shall apply to interest accruing on or after February 1, 1980. This rate shall apply to interest accruing up to the effective date of any subsequent adjusted rate of interest established under 26 U.S.C. 6621.

(6) Subsequent adjusted interest rates shall apply when established by the Secretary of the Treasury or his delegate pursuant to 26 U.S.C. 6621. Such adjusted rates shall continue in effect until the effective date of any further adjustment.

(c) *Example.* * * *

* * * * *

(Sec. 7. Pub. L. 93-625, 88 Stat. 2114 as amended (26 U.S.C. 6621), 68A Stat. 817 as amended (26 U.S.C. 6601))

4. The implied requirement for separate Forms 11 to cover different rates of special tax is removed from § 194.124. As amended, § 194.124 reads as follows:

§ 194.124 Stamps for passenger trains, aircraft, and vessels.

Special tax stamps may be issued in general terms "in the United States" to persons who will carry on the business of retail dealers in liquors or retail dealers in beer, on trains, aircraft, boats or other vessels, engaged in the business of carrying passengers. If sales of liquors are made at the same time on two or more passenger carriers, a special tax stamp shall be obtained for each such carrier. However, a dealer may transfer any such stamp from one passenger carrier to another on which he conducts his business, without registering the transfer with the Internal Revenue Service, and he may conduct such business throughout the passenger carrying train, aircraft, boat or other vessel, to which the stamp is transferred. A person subject to special tax on two or more passenger carriers shall file one Form 11, prepared in the manner prescribed in § 194.106(b), with payment of tax, to cover all such carriers and shall specify on the Form 11 the number of passenger carriers for which special tax is being paid.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1344 as amended, 1347 as amended (26 U.S.C. 5123, 5143))

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

Par. C. The regulations in 27 CFR 197.28 are amended to remove the implication that separate Forms 11 are necessary if different rates of special tax are to be paid. As amended, § 197.28 reads as follows:

§ 197.28 Filing of return and payment of special tax.

(a) *General.* Returns shall be filed on IRS Form 11, with payment of tax, with the director of the service center serving the internal revenue district in which the place of manufacture is located.

(b) *Multiple locations.* If a taxpayer is subject to special (occupational) tax at two or more locations, he shall file one special tax return Form 11 (prepared in the manner prescribed in § 197.29), with payment of tax to cover all such locations. The return with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located. In addition, he shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name (and trade name, if any) and address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer for a period of not less than 2 years.

PART 245—BEER

Par. D. The regulations in 27 CFR 245.76 are amended to remove the implied requirement for separate Forms 11 covering different rates of special tax. As amended, § 245.76 reads as follows:

§ 245.76 Special tax return.

(a) *General.* Every person required to pay special tax shall prepare a return on IRS Form 11. The return shall be filed, with payment of tax, with the director of the service center serving the internal revenue district in which the taxpayer's business is located.

(b) *Multiple locations.* A taxpayer subject to special (occupational) tax for the same period at two or more locations shall file one special tax return Form 11 (prepared in the manner prescribed in § 245.76a) with payment of tax to cover all such locations. The return with tax shall be filed with the director of the service center serving the internal revenue district in which the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer) is located. In addition, the taxpayer shall prepare, in duplicate, a list identified with his name, address, employer identification number, class of tax, and period covered by his return. The list shall show, by States, the name and address of each location (including the taxpayer's principal place of business, or principal office, if subject to special tax) for which special tax is being paid. The original of the list shall be attached to the Form 11, as a part of his return, and the copy shall be retained by the taxpayer for a period of not less than 2 years.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1346 (26 U.S.C. 5142))

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. E. The regulations in 27 CFR Part 250 are amended as follows:

1. Section 250.44 is amended to require IRS Forms 11 to be filed with the director of the service center in all instances. Previously, there were some

situations in which these forms had been required to be filed with the district director. As amended, § 250.44 reads as follows:

§ 250.44 Liquor dealer's special taxes.

Every person bringing liquors into the United States from Puerto Rico, who sells, or offers for sale, such liquors shall file IRS Form 11 with the director of the service center serving the internal revenue district in which the business is located, and pay special (occupational) tax as a wholesale dealer in liquor or as a retail dealer in liquor in accordance with the law and regulations governing the payment of such special taxes (Part 194 of this chapter).

(Sec. 201, Pub. L. 85-859, 72 Stat, 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

1. Section 250.210 is amended to require IRS Forms 11 to be filed with the director of the service center in all instances. Previously, there were some instances in which these forms had been required to be filed with the district director. As amended, § 250.210 reads as follows:

§ 250.210 Liquor dealer's special taxes.

Every person bringing liquors into the United States from the Virgin Islands, who sells, or offers for sale, such liquors shall file IRS Form 11 with the director of the service center serving the internal revenue district in which the business is located, and pay special (occupational tax as a wholesale dealer in liquor or as a retail dealer in liquor, in accordance with the laws and regulations governing the payment of such special taxes (Part 194 of this chapter)).

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEERS

Par. F. The regulations in 27 CFR 251.30 are amended to require Forms 11 to be filed with the director of the service center in all instances. Previously, there were some situations in which these forms had been required to be filed with the district director. Non-substantive stylistic changes are also made. As amended, § 251.30 reads as follows:

§ 251.30 Special (occupational) tax.

Importers engaged in the business of selling, or offering for sale, distilled spirits, wines or beer are subject to the provisions of Part 194 of this chapter relating to special (occupational) taxes. Part 194 requires that the special tax return, IRS Form 11, with payment of the tax, shall be filed with the director of the service center serving the internal revenue district in which the business is located, before commencing business. Subsequently, Form 11 with tax shall be filed each year on or before July 1, as long as the proprietor continues in business.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1340 as amended, 1343 as amended, 1344 as amended (26 U.S.C. 5111, 5112, 5121, 5122))

PART 252—EXPORTATION OF LIQUOR

Par. G. The regulations in 27 CFR 252.332 are amended to update the reference to the rate of interest due on money owed to the United States and to make stylistic changes. As amended, § 252.332 reads as follows:

§ 252.332 Claim against bond.

When any claim supported by a

bond has been allowed and changed against the bond under the provisions of § 252.331, and the original of the claim properly executed by the appropriate customs official or armed services officer as required by this part is not received by the regional regulatory administrator within three months of the date the claim was allowed, or where the distilled spirits or wines are not otherwise accounted for in accordance with this part, the regional regulatory administrator shall advise the claimant of the facts, and notify him that unless the original of the claim, properly executed as required by this part, is received by the regional regulatory administrator within 30 days, a written demand will be made upon the principal and the surety for repayment to the United States of the full amount of the drawback, plus interest at the rate prescribed by law from the time the drawback was paid. However, the regional regulatory administrator may, if in his opinion the circumstances warrant it, grant the claimant any additional extension of time beyond 30 days as may be necessary to accomplish the required filing.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336 as amended (26 U.S.C. 5062))

Signed: April 7, 1980.

G. R. Dickerson,
Director.

Approved: April 23, 1980.

Richard J. Davis,
Assistant Secretary of the Treasury
(Enforcement and Operations).

(Filed by the Office of the Federal Register on May 20, 1980, 8:45 a.m., and published in the Federal Register for May 21, 1980, 45 F.R. 33978)

Subpart C—Treasury Department Orders and Delegation Orders

Delegation Order ATF O 1100.122

Authorities of the Director relating to the Right to Financial Privacy Act of 1978

1. *Purpose.* This order delegates certain authorities now vested in the Director by Treasury Department Directive TD 90-22.A to Regulatory Enforcement and administrative personnel.

2. *Scope.* This directive applies to the Office of Regulatory Enforcement and the Office of Administration.

3. *Background.* The Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3422, Title XI of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law No. 95-630, 92 Stat. 3641, imposes new requirements on Government access to financial information from financial institutions and other Government agencies. At present, all functions under the Act are being performed by the Director. This order allows certain functions to be performed by those officials responsible for related action.

4. *Delegations.* Under the authority vested in the Director by Treasury Department directive TD 90-22.A, dated March 28, 1979; the authority to take final action on the following matters is delegated to:

a. *Regional Regulatory Administrators.* The following acts should be carried out with the advice of Regional Counsel:

(1) To apply to the appropriate U.S. attorney who may petition in the

United States district court for delay in notice to the customer and to issue post-notice to the customer that there has been a court-ordered delay under 12 U.S.C. § 3409.

(2) To certify that delay in obtaining access to customer financial records as required by the special procedures provision in 12 U.S.C. § 3414(b) would create imminent danger of (a) physical injury to any person, (b) serious property damage, or (c) flight to avoid prosecution, so that governmental access to customer account records may lawfully be provided by the financial institution.

(3) To issue administrative summonses, otherwise within the regional regulatory administrator's authority, and proper notice to the customer under 12 U.S.C. § 3405.

(4) To issue formal written requests and proper notice to the customer under 12 U.S.C. § 3408 and 31 CFR Part 14.

(5) To issue notice to the customer regarding judicial subpoenas as required by 12 U.S.C. § 3407.

(6) To transfer customer record information to another agency or department and to issue proper notice to the customer concerning such matters under 12 U.S.C. § 3412.

(7) To request account information under 12 U.S.C. § 3413(g).

(8) To issue notice to the customer that no legal proceeding is contemplated as required in 12 U.S.C. § 3410(d).

(9) To certify in writing to a financial institution that all applicable provisions of the Right to Financial Privacy Act of 1978 have been complied with under 12 U.S.C. 3403(b).

b. *Inspectors (Regulatory Enforcement)*. To obtain customer authorizations given under 12 U.S.C. 3404(a) and to certify in writing under 12 U.S.C. 3403(b) that all applicable provisions of the Right to Financial Privacy Act of 1978 have been complied with regarding customer-authorized disclosures.

c. *Chief, Paperwork Management Branch*. To gather and submit to the Office of the Secretary, for inclusion in the annual report to Congress required by 12 U.S.C. § 3421(b), information concerning the number of requests for records made during the preceding calendar year according to type, and other related information pertinent to the implementation of the Right to Financial Privacy Act of 1978.

5. *Redelegation*.

a. The authorities in paragraphs 4a(1), 4a(2), 4a(3), 4b, and 4c may not be redelegated.

b. The authorities in paragraphs 4a(4), 4a(5), 4a(6), 4a(7), 4a(8) and 4a(9) may be redelegated but not lower than the position of chief, technical services, or chief field operations.

6. *Effective date*. This order becomes effective on March 21, 1980.

Signed: March 4, 1980.

G. R. Dickerson,
Director.

(Filed by the Office of the Federal Register on March 20, 1980, 8:45 a.m., and published in the Federal Register for March 21, 1980, 45 F.R. 18546)

Delegation Order ATF O 1100.123

Authorities of the Director in 27 CFR Part 181, Explosives

1. *Purpose*. This order delegates to the Assistant Director (Regulatory Enforcement) certain authorities now vested in the Director by regulations in 27 CFR Part 181. This order also allows for redelegation to a lower practicable level.

2. *Background*. Under current reg-

ulations, the Director has authority to take final action on matters relating to commerce in explosives. It has been administratively determined that certain authorities now vested in the Director by these regulations belong at, and should be delegated to a lower level. This will allow the Bureau to handle matters relating to explosives in a more expedient way.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Assistant Director (Regulatory Enforcement):

a. To prescribe forms required by Part 181, under 27 CFR 181.21.

b. To approve written applications for use of alternate methods or procedures in lieu of a method or procedure specifically prescribed in regulations, under 27 CFR 181.22(a).

c. To withdraw authorization of any alternate method or procedure, under 27 CFR 181.22(a).

d. To approve written applications for emergency variations from the specified requirements in regulations, including construction, equipment, and methods of operation, under 27 CFR 181.22(b).

e. To withdraw authorization for any variation, under 27 CFR 181.22 (b).

f. To approve other methods for immobilizing vehicular magazines, under 27 CFR 181.188(a), 181.190(a), 181.191(a).

4. *Redelegation.*

a. The authority in paragraph 3a may be redelegated only to Bureau Headquarters personnel not lower than the position of branch chief.

b. The authority in paragraph 3b may be redelegated to Bureau Headquarters (Regulatory Enforcement) personnel not lower than the position of ATF specialist. This authority may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, who may approve requests that are identical to those previously approved by Bureau Headquarters.

c. The authority in paragraph 3c may be redelegated to Bureau Headquarters (Regulatory Enforcement) personnel not lower than the position of branch chief. This authority may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, to withdraw only alternate methods approved by regional officials.

d. The authority in paragraph 3d may be redelegated to Bureau Headquarters (Regulatory Enforcement) personnel not lower than the position of ATF specialist. This authority may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, or area supervisor.

e. The authority in paragraph 3e may be redelegated to Bureau Headquarters (Regulatory Enforcement) personnel not lower than the position of branch chief. This authority may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, to withdraw only variations approved by regional officials.

f. The authority in paragraph 3f may be redelegated to Bureau Headquarters (Regulatory Enforcement) personnel not lower than the position of ATF specialist. This authority may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, to approve only methods identical to those approved previously by Bureau Headquarters.

5. *Effective date.* This order becomes effective on April 18, 1980.

Signed: April 1, 1980.

Miles N. Keathley,
Acting Director.

(Filed by the Office of the Federal Register on April 7, 1980, 8:45 a.m., and published in the Federal Register for April 8, 1980, 45 F.R. 23845)

Delegation Order ATF O 1100.124

Authorities of the Director in 27 CFR Parts 4, 5, and 7 Relating to the Federal Alcohol Administration Act

1. *Purpose.* This order delegates to the Assistant Director (Regulatory Enforcement) certain authorities now vested in the Director by regulations in 27 CFR Parts 4, 5, and 7. This order also allows for redelegation to a lower practicable level.

2. *Background.* Under current regulations, the Director has the authority to take final action on matters relating to the Federal Alcohol Administration Act. It has been administratively determined that certain authorities now vested in the Director by these regulations belong at, and should be delegated to a lower level. This will allow the Bureau to handle matters relating to the Federal Alcohol Administration Act in a more expedient way.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Assistant Director (Regulatory Enforcement):

a. To determine, pursuant to application, whether wine made from any variety of any species which is too strongly flavored at 75 percent minimum varietal content, may be labeled with the varietal name, under 27 CFR 4.23a(c)(2).

b. To determine whether a name of geographic significance which is also the designation of a class or type of wine is deemed to be generic or semigeneric, under 27 CFR 4.24(a)(1) and 4.24(b)(1).

c. To deem a name of geographic significance, which has not been found to be generic or semigeneric to be the distinctive designation of a wine when found that it is known to the consumer and to the trade as a designation of a specific wine of a particular place or region, distinguishable from all other wines, under 27 CFR 4.24(c)(1).

d. To determine whether a brand name, either when qualified by the word "brand" or when not so qualified, conveys no erroneous impression as to the age, origin, identity, or other characteristics of the produce, under 27 CFR 4.33(b), 5.34(a) and 7.23(b).

e. To approve methods for permanently marking the net contents on bottles, under 27 CFR 4.37(d), 5.38(a) and 5.38a(a).

f. To require the submission of a full and accurate statement of the contents of containers and bottles to which labels are to be or have been affixed, under 27 CFR 4.38(h) and 5.33(g).

g. To prohibit any statement, design, device, or representation of or relating to analyses, standards, tests, guarantees, irrespective of falsity, which is likely to mislead the consumer, on a container or bottle of wine, distilled spirits, or malt beverage, or on any label on such containers, or any individual covering, carton, or other wrapper of such container, or any written, printed, graphic, or other matter accompanying such container to the consumer, under 27 CFR 4.39

(a)(4), 4.39(a)(5), 5.42(a)(4), 5.42 (a)(5), 7.29(a)(4), and 7.29(a)(5).

h. To require that dates on labels which refer to the establishment of any business or brand name be stated in direct conjunction with the name of the person, company, or brand name to which it refers in order to prevent confusion as to the person, company, or brand name to which the establishment date is applicable, under 27 CFR 4.39(d).

i. To prohibit the use of any label which contains any statement, design, device, or pictorial representation, which relates to, or is capable of being construed as relating to the Armed Forces of the United States or to the American flag, or any emblem, seal, insignia, or decoration associated with the Armed Forces or the flag, under 27 CFR 4.39(g), 5.42(b)(7), and 7.29(d).

j. To determine when a name has viticultural significance, under 27 CFR 4.39(i).

k. To allow the use of product names with specific geographical significance that because of their long usage are recognized by consumers as fanciful product names and not representations as to origin; and to require the label to bear a statement disclaiming the geographical reference as a representation as to the origin of the wine, under 27 CFR 4.39(j).

l. To prohibit the use of any advertisement for wine, distilled spirits, or malt beverages, which contains any statement, design, device, or representation of or relating to analyses, standards, tests, or any guarantee, irrespective of falsity, which is likely to mislead the consumer, under 27 CFR 4.64 (a)(4), 4.64(a)(5), 5.65(a)(4), 5.65 (a)(5), 7.54(a)(4), and 7.54(a)(5).

m. To approve written applications to waive the bottles per case requirement under 27 CFR 4.74(b).

n. To determine as generic those geographical names or distinctive places for distilled spirits, or malt beverages, which have by usage and common knowledge lost their geographical significance to such an extent that they have become generic, under 27 CFR 5.22(k)(2), 5.22(l)(2), and 7.24(g).

o. To require that the words "cordial" or "liqueur" be used to designate a product when it is necessary to clearly indicate that the product is a cordial or a liqueur, under 27 CFR 5.35(a).

p. To require that the State of distillation be shown on the label or to permit such other labeling as may be necessary to negate any misleading or deceptive impression which may be created as to the actual State of distillation, under 27 CFR 5.36(d).

q. To specify specialties for which the alcoholic content may be stated in percentage by volume, under 27 CFR 5.37.

r. To specifically exempt, pursuant to application, liquor bottles of unusual design from the "headspace" and "design" requirements in 27 CFR 5.46, under 27 CFR 5.48(a).

s. To specify the specialties which are exempt from the standards of fill provisions of 27 CFR 5.47(a) and 5.47a(a), under 27 CFR 5.48(b).

t. To specify the specialties for which alcoholic content may be stated in percentage by volume in advertisements, under 27 CFR 5.63(c).

u. To prohibit the use of an advertisement for distilled spirits which contains any statement, design, device, or pictorial representation which relates to, or is capable of being construed as relating to the Armed Forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or Armed Forces, under 27 CFR 5.65(g).

v. To affix the Director's name to label approvals, under 27 CFR 4.40

(b), 4.50(a), 5.51, 5.55(a), 7.31, and 7.41.

w. To affix the Director's name on exemptions from label approval, under 27 CFR 4.50(b) and 5.55(b).

x. To issue duplicate originals of certificates of label approval or of certificates of exemption, under 27 CFR 4.52 and 5.55(c).

y. To approve distilled spirits formulas under 27 CFR 5.26.

z. To approve aplications by successors to adopt predecessors' formulas under 27 CFR 5.28.

4. *Redelegation*. The authorities in paragraph 3 may be redelegated only to Bureau Headquarters personnel not lower than the position of ATF specialist.

5. *Effective date*. This order becomes effective on April 8, 1980.

Signed: April 1, 1980.

Miles N. Keathley,
Acting Director.

(Filed by the Office of the Federal Register on April 7, 1980, 8:45 a.m., and published in the Federal Register for April 8, 1980, 45 F.R. 23846)

Delegation Order ATF O 1100.125

Authorities of the Director in 27 CFR Part 19, Distilled Spirits Plants

1. *Purpose*. This order delegates to the Assistant Director (Regulatory Enforcement) certain authorities now vested in the Director by regulations in 27 CFR Part 19.

2. *Background*. The Distilled Spirits Tax Revision Act of 1979 (Pub. L. 96-39) has significantly changed many aspects of ATF's role in monitoring industry activities. The Director has been given some new authorities by regulations developed under this Act. It has been administratively determined that certain authorities now vested in the Director by these regulations belong at, and should be delegated to a lower level. This will allow the Bureau to handle these matters relating to the Distilled Spirits Tax Revision Act of 1979 in a more expedient way.

3. *Delegations*. Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Assistant Director (Regulatory Enforcement):

a. To approve locks of unusual design, under 27 CFR 19.281(e).

b. To approve alternative devices used as an alternative to red or green strip stamps and to approve any designs or lettering appearing on the alternative devices, under 27 CFR 19.663(b).

4. *Redelegation*. The authorities in paragraph 3 may be redelegated only to Bureau Headquarters personnel not lower than the position of ATF specialist.

5. *Effective date*. This order becomes effective on May 8, 1980.

Signed: April 1, 1980.

Miles N. Keathley,
Acting Director.

(Filed by the Office of the Federal Register on April 7, 1980, 8:45 a.m., and published in the Federal Register for April 8, 1980, 45 F.R. 23847)

Delegation Order ATF O 1100.126

Authorities of the Director in 27 CFR Part 13, Gauging Manual

1. *Purpose*. This order delegates to the Assistant Director (Regulatory Enforcement) certain authorities now vested in the Director by regulations in 27 CFR Part 13. This order also

allows for redelegation to a lower practicable level.

2. *Background.* Under current regulations, the Director has the authority to take final action on matters relating to the gauging manual. It has been administratively determined that certain authorities now vested in the Director by these regulations belong at, and should be delegated to a lower level. This will allow the Bureau to handle matters relating to the gauging manual in a more expedient way.

3. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Assistant Director (Regulatory Enforcement):

a. To approve the use of other instruments for determination of specific gravity, under 27 CFR 13.21.

b. To approve meters or other devices or methods and to authorize their use for determination of the quantity of distilled spirits or denatured spirits by volume; and to authorize the determination of the quantity of distilled spirits or denatured spirits by a statistical control method under 27 CFR 13.36 and 13.51.

4. *Redelegation.* The authorities in paragraph 3 may be redelegated to Bureau Headquarters personnel not lower than the position of ATF specialist. The authorities in paragraph 3 may also be redelegated to regional Regulatory Enforcement personnel not lower than the position of chief, technical services, who may approve requests that are identical to those previously approved by Bureau Headquarters.

5. *Effective date.* This order becomes effective on April 8, 1980.

Signed: April 1, 1980.

MILES N. KEATHLEY,
Acting Director.

(Filed by the Office of the Federal Register on April 7, 1980, 8:45 a.m., and published in the Federal Register for April 8, 1980, 45 F.R. 23845)

Delegation Order R O 1100.25

Redelegation by the Assistant Director (Regulatory Enforcement) of Certain Authorities in the Regulations of 27 CFR

1. *Purpose.* This order redelegates certain authorities delegated to the Assistant Director (Regulatory Enforcement) to the lowest practicable level within the Office of Regulatory Enforcement. This order also permits the restriction and/or revocation of some of the delegated authorities by certain designated officials.

2. *Cancellation.* The following delegation orders are canceled:

a. R O 1100.6, dated 1/26/78
b. R O 1100.7B, dated 9/7/79
c. R O 1100.8, dated 4/24/78
d. R O 1100.9, dated 4/25/78
e. R O 1100.10, dated 5/25/78
f. R O 1100.11, dated 8/18/78
g. R O 1100.12, dated 8/30/78
h. R O 1100.13, dated 8/22/78
i. R O 1100.14, dated 8/23/78
j. R O 1100.15, dated 8/23/78
k. R O 1100.16, dated 1/4/79
l. R O 1100.19, dated 1/4/79
m. R O 1100.20, dated 1/4/79
n. R O 1100.22, dated 1/16/79

o. Any other delegation order that bases its authority on the R O orders mentioned above.

3. *Background.*

a. It has been administratively determined that certain authorities now vested in the Assistant Director (Regulatory Enforcement) should be delegated to the lowest practicable level.

b. In this order, delegations are being made by sections of the regulations. The authorities of the Director found in each particular referenced section of the regulations have been delegated to the Assistant Director (RE) by various ATF orders. This order now redelegates those authorities to certain designated positions. Those positions are abbreviated as follows:

Symbol	*Position*
RRP	Chief, Procedures Branch
RRL	Chief, Rulings Branch
RTC	Chief, Commodity Classification Branch
RTS	Chief, Special Operations Branch
RRL-S	Specialist, Rulings Branch
RTC-S	Specialist, Commodity Classifications Branch
RTS-S	Specialist, Special Operations Branch
RRA	Regional Regulatory Administrator
CTS	Chief, Technical Services (RE)
AS	Area Supervisor

Other Symbols	*Meaning*
*	The official so designated has the authority to act only on matters identical to those previously approved by Bureau Headquarters officials.

c. The subject index is provided to facilitate the use of this order. It serves to break down certain sections of the regulations that contain more than one authority. Thus, by identifying each authority, the delegation can be made separately. The subject index also serves to limit some of the authorities being delegated.

d. This order provides flexibility in that it allows for the restriction or revocation of the delegated authorities by certain levels. Any restriction or revocation must be made in writing to those persons affected.

4. *DELEGATIONS.*

a. The Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms has the authority to take action on certain matters as given to him by the following ATF orders:

(1) ATF O 1100.6A, dated 2/15/78
(2) ATF O 1100 .78A, dated 11/21/77
(3) ATF O 1100.83, dated 3/3/78
(4) ATF O 1100.84, dated 3/9/78
(5) ATF O 1100.85, dated 5/2/78
(6) ATF O 1100.86, dated 5/25/78
(7) ATF O 1100.87, dated 6/1/78
(8) ATF O 1100.88, dated 6/5/78
(9) ATF O 1100.90, dated 6/12/78
(10) ATF O 1100.91, dated 7/11/78
(11) ATF O 1100.92, dated 7/24/78
(12) ATF O 1100.94, dated 8/28/78
(13) ATF O 1100.96, dated 9/13/78
(14) ATF O 1100.97, dated 9/21/78
(15) ATF O 1100.99, dated 11/24/78
(16) ATF O 1100.100, dated 12/5/78
(17) ATF O 1100.101, dated 12/13/78

(18) ATF O 1100.102, dated 1/3/79
(19) ATF O 1100.103, dated 1/3/79
(20) ATF O 1100.104, dated 1/3/79
(21) ATF O 1100.105, dated 1/3/79
(22) ATF O 1100.106, dated 1/3/79
(23) ATF O 1100.107, dated 2/6/79
(24) ATF O 1100.113, dated 10/26/79

b. The Assistant Director (Regulatory Enforcement) hereby delegates the authorities described in each particular section of regulations of 27 CFR as follows:

Regulation #	*Position*	*Subject*
1.3	RRP	Forms prescribed
1.5	RRP	Basic permit form prescribed
1.25	RRP	Form of basic permit application
1.56	RRP	Verification of documents
4.23a(c)(2)	RTC	Varietal labeling
4.24(a)(1)	RTC	Generic designations
4.24(b)(1)	RTC	Semigeneric designation
4.24(c)(1)	RTC	Geographic significance
4.33(b)	RTC-S	Misleading brand names
4.37(d)	RTC-S	Net contents marked in bottle
4.38(h)	RTC-S	Statement of contents of container
3.39(a)(4)	RTC-S	Analyses, standards, tests
4.39(a)(5)	RTC-S	Guarantees
4.39(d)	RTC-S	Miscellaneous dates
4.39(g)	RTC-S	Flags, seals, insignias, etc.
4.39(i)	RTC	Viticultural significance
4.39(j)	RTC	Geographical significance
4.40(b)	RTC-S	Approve labels
4.50(a)	RTC-S	Approve labels
4.50(b)	RTC-S	Exemption from label approval
4.52	RTC-S	Issue duplicate originals
4.64(a)(4)	RTC-S	Prohibited statements
4.64(a)(5)	RTC-S	Prohibited statements
4.74(b)	RTC-S	Bottles per case waiver
5.22(k)(2)	RTC	Generic determination
5.22(l)(2)	RTC	Generic determination
5.26	RTC-S	Approve formulas
5.28	RTC-S	Adoption of formulas
5.33(g)	RTC-S	Statement of contents of bottles
5.34(a)	RTC-S	Misleading brand names
5.35(a)	RTC-S	Designation of product; cordial, liqueur
5.36(d)	RTC-S	State of distillation
5.37	RTC-S	Alcoholic content by volume
5.38(a)	RTC-S	Net contents; distilled spirits
5.38a(a)	RTC-S	Metric net contents
5.42(a)(4)	RTC-S	Prohibited practices; spirits
5.42(a)(5)	RTC-S	Prohibited practices; spirits
5.42b(7)	RTC-S	Labeling (flags, insignias, etc.)
5.48(a)	RTC-S	Headspace and design exceptions
5.48(b)	RTC	Standards of fill exceptions

Regulation #	*Position*	*Subject*
5.51	RTC-S	Approve labels
5.55(a)	RTC-S	Approve labels
5.55(b)	RTC-S	Exemption from label approval
5.55(c)	RTC-S	Issue duplicate originals
5.63(c)	RTC-S	Alcoholic content
5.65(a)(4)	RTC-S	Prohibited statements—advertising
5.65(a)(5)	RTC-S	Prohibited statements—advertising
5.65(g)	RTC-S	Advertisement; seals, flags, etc.
7.23(b)	RTC-S	Misleading brands; beer
7.24(g)	RTC	Generic determination; beer
7.29(a)(4)	RTC-S	Prohibited practices; beer
7.29(a)(5)	RTC-S	Prohibited practices; beer
7.29(d)	RTC-S	Flags, seals, insignias, etc.; beer
7.31	RTC-S	Approve labels
7.41	RTC-S	Approve labels
7.54(a)(4)	RTC-S	Prohibited advertising; beer
7.54(a)(5)	RTC-S	Prohibited advertising; beer
13.21	RRL, CTS*	Instruments (specific gravity)
13.36	RRL, CTS*	Meters and other devices
13.36	RRL, CTS*	Statistical control method
13.51	RRL, CTS*	Volumetric measurement
18.21	RRP	Forms prescribed
18.22(a)	RRL-S	Approval of concentrate plant
18.22(b)	RRL-S, CTS*	Other businesses
18.23(a)	RRL-S, CTS*	Approval of alternate methods
18.23(b)	RRL, CTS, AS	Emergency variations approval
18.23(a)	RRL	Withdrawal of any variations or alternate methods
18.23(b)	CTS	Withdrawal of variations and alternate methods approved by regional officials
18.42	RRL-S, CTS*	Other businesses
18.43	RRL-S	Approval of concentrate plant
18.62	RRL-S	Other methods: plats and plans
18.142	RRL-S, CTS*	Reproduction of records
19.61	RRP	Forms prescribed
19.62(a)	RRL	Approve alternate methods
19.62(a)	RRL	Withdraw alternate methods
19.62(b)	RRL, CTS, AS	Approve emergency variations
19.62(b)	RRL	Withdraw emergency variations
19.62(b)	CTS	Withdraw emergency variations approved by regional officials
19.63	RRL	Pilot operations
19.64	RRL	Experimental DSPs
19.64	CTS	Approve ONLY experimental DSPs relating to alcohol fuel

Regulation #	*Position*	*Subject*
19.65	RRL	Approve application for experimental DSP
19.65	CTS	ONLY approve application for alcohol fuel related DSP
19.66	RRL	Approve waivers
19.67	RRL, CTS	Other businesses
19.69	RRL, CTS	Disaster exemptions
19.71	RRL, CTS	Storage facility discontinuance
19.72	RRL	Experimental or Research operations
19.72	RRA	Experimental or Research operations ONLY relating to alcohol fuel
19.91	RRL, CTS*	Volumetric gauges
19.96(b)(1)	RRL	Sealing conveyances
19.187(b)	RTC-S	Adoption of formulas
19.281(e)	RRL	Approving locks
19.319(a)	RRL, CTS*	Measuring production gauges
19.326	RRL	Spirit content of chemicals
19.342(b)	RRL, CTS*	Storage tank meters
19.407	RTC-S	Labels for export
19.454(a)	RRL, CTS*	Meters and devices
19.459(c)	RRL	Conversion of SDA
19.460(b)	RRL, CTS*	Meter and other devices
19.538	RTS-S	Permits for U.S.
19.539	RRL, CTS	Disposition excess spirits
19.581	RRL, CTS	Other containers
19.597(c)	RRL	Other designations
19.604	RRL	Caution labels
19.609	RTC-S	Marks—Gov't side of cases
19.634	RTC-S	Distinctive liquor bottles
19.635	RTC, CTS	Receive and reuse liquor bottles
19.638	RTC-S	Deceptive bottles
19.643	RTC	Labels—State of distillation
19.661(c)	RRL, CTS, AS	Overprinting strip stamps
19.663(b)	RRL	Approving alternative devices
19.665	RRL, CTS	Obscuring strip stamps
19.744(d)	RRL	Modifying forms discontinued
170.154	RRP	Prescribe forms only in subpart G
170.302	RRP	Prescribe forms
170.613(b)	RRL-S	Formula and samples
170.615	RRL-S	Approve formula changes
170.617(a)	RRL-S	Products declared unfit for beverage use
170.618	RRL-S	Products declared unfit for beverage use
170.686	RTC-S	To approve formulas and require submission of samples
173.2	RRP	Forms prescribed

Regulation #	*Position*	*Subject*
173.33	RTC-S	Marking indicia on domestic bottles
173.33	RTC-S	Distinctive liquor bottles
173.34(a) (b)	RTC-S	Marking indicia on imported bottles
173.34(b)	RTC-S	Distinctive liquor bottles
178.21	RRP	Forms prescribed EXCEPT subpart G
178.22(a)	RTS, RTS-S*, CTS, AS	Approve emergency variations
178.22(b)	RTS	Withdrawal of variations
178.22(b)	CTS	Withdrawal of variations approved by regional officials
181.21	RRP	Forms prescribed
181.22(a)	RTS, CTS*	Approve alternate methods
181.22(a)	RTS	Withdraw alternate methods
181.22(a)	CTS	Withdraw alternate methods approved by regional officials
181.22(b)	RTS, RTS-S*, CTS, AS	Approve emergency variations
181.22(b)	RTS	Withdraw emergency variations
181.22(b)	CTS	Withdraw emergency variations approved by regional officials
181.188(a)	RTS, CTS*	Other methods for locking magazines
181.190(a)	RTS, CTS*	Other methods for locking magazines
181.191(a)	RTS, CTS*	Other methods for locking magazines
194.41	RRP	Forms prescribed
194.229	RRL-S	Variations in format, preparation of records
194.243	RRL-S, CTS*	Reproduction of records
194.244	RRP	Prescribing forms at user's own expense
194.244	RRL-S, CTS*	Modification of forms
195.2	RRP	Forms prescribed
195.96	RRL-S, CTS	Other materials; plats and plans
195.224	RRL-S, CTS*	Exception to construction, equipment
195.225	RRL, CTS, AS	Emergency exception to methods of operation
196.2	RRP	Forms prescribed
196.32	RRL-S	Ruling re: manufacture of still
197.2	RRP	Forms prescribed
211.21	RRP	Forms prescribed
211.22(a)	RRL-S, CTS*	Approval of alternate methods
211.22(a)	RRL	Withdrawal of alternate methods

Regulation #	***Position***	***Subject***
211.22(a)	CTS	Withdrawal of alternate method approved by regional official
211.22(b)	RRL, CTS, AS	Approve emergency variations
211.22(b)	RRL	Withdrawal of emergency variation
211.22(b)	CTS	Withdrawal of emergency variation approved by regional official
211.25	RTS-S	Issuing permits
211.142	RRL-S, CTS	Marks on containers
211.231	RTS-S	Approve applications and issue permits
211.236	RTS-S	To cancel permits
211.237	RRL-S, CTS, AS	Disposition of excess SDA (R)
211.274	RRL-S, CTS*	Reproduction of records
211.275	RRP	Format ATF F 133 (5150.29)
212.2	RRP	Forms prescribed
212.3(b)	RRL-S	Stocks of discontinued formulas
212.15(a)	RRL-S	Use of alcohol below 185 proof
212.65	RRL-S	Substitute denaturants
213.21	RRP	Forms prescribed
213.22(a)	RRL-S, CTS*	Approves alternate methods
213.22(a)	RRL	Withdrawal of alternate methods
213.22(a)	CTS	Withdrawal of alternate methods approved by regional official
213.22(b)	RRL, CTS, AS	Approve emergency variations
213.22(b)	RRL	Withdrawal emergency variations
213.22(b)	CTS	Withdrawal emergency variations approved by regional officials
213.24	RTS-S	Issuing permits
213.102	RRL-S	States and District
213.142	RTS-S	Approve applications and issue permits
213.145	RTS-S	To cancel permits
213.146	RRL-S, CTS, AS	Disposition of excess tax-free
213.176	RRL-S, CTS*	Reproduction of record
231.2	RRP	Forms prescribed
231.111	RRP	Prescribe ATF F 2060 (5140.1)
231.120(a)	RRL-S, CTS*	Approve alternate methods
231.120(a)	RRL	Withdrawal alternate methods
231.120(a)	CTS	Withdrawal alternate methods approved by regional officials
231.120(b)	RRL, CTS, AS	Approve emergency variations
231.120(b)	RRL	Withdraw emergency variations
231.120(b)	CTS	Withdraw emergency variations approved by regional officials
240.2	RRP	Forms prescribed
240.120	RRL-S, CTS, AS	Bonded wine cellar premises
240.134	RRL-S	Other operations

Regulation #	*Position*	*Subject*
240.166	RRL-S, CTS, AS	Construction of fences, walls
240.213	RTC-S	Obsolete formulas
240.271	RRL-S, CTS, AS	Other materials for plats
240.290a	RTC-S	Adoption of formulas
240.385	RTC-S	Flor sherry wine
240.441	RTC-S	Formula change
240.446	RTC-S	Production of essences
240.447	RTC-S	Essences made elsewhere
240.465	RTC-S	ATF F 698—Supplemental approval
240.482	RTC-S	ATF F 698—Supplemental approval
240.485a	RTC-S	ATF F 698—Supplemental approval
240.513	RTC-S	ATF F 698—Supplemental approval
240.534	RRL-S	CO2 test procedures
240.905	RRP	Forms prescribed
240.940	RRL	Construction and equipment exception
240.941	RRL	Method of operation exception
240.942	RRL	Application approval
240.1051	RRL	Cancellation of approved materials
240.1052	RRL	Alternate materials or methods for treatment of wine
245.2	RRP	Forms prescribed
245.12	RRL, CTS*, AS*	Use of brewery
245.66	RRL-S, CTS*, AS*	Preparation of plats
245.111a	RTC-S	Container determination
245.125(a)	RTC-S, CTS*, AS*	Marking barrels and kegs
245.126	RTC-S	Actual place of production
245.221	RRL, CTS*, AS*	Approve exceptions, alternate methods
245.221	RRL	Cancel exceptions
245.221	CTS	Cancel exceptions approved by regional officials
245.225	RRL-S, CTS	Require maintenance of ATF F 2051 (5130.5)
245.233	RRL-S, CTS*	Reproduction of records
245.236	RRL-S	Concentration or reconstitution of beer
245.237	RRL-S	Approval of concentration process
245.237	RRL	Withdrawal of approval of concentration process
245.238	RRL-S	Reconstitution process
245.239	RRL-S	Approval of reconstitution process
245.239	RRL	Withdrawal of approval of reconstitution process

Regulation #	*Position*	*Subject*
250.2	RRP	Forms prescribed
250.43	RRL-S	Sample requirement
250.54	RTC-S	Approval of formulas
250.138	RRL-S, CTS	Affixing strip stamps
250.165	RRL-S	Forms prescribed; ATF F 52A, 52B, 338
250.192	RRL-S	Nonconforming products
250.209	RRL-S	Sample submission
250.224	RTC-S	Approval of formulas
250.233	RRL-S, CTS	Affixing strip stamps
250.274	RRL-S	ATF F 52A, 52B, 338
250.314	RTC-S	Distinctive liquor bottles
250.316	RTC-S	Disapproval of liquor bottles
250.319	RTC-S, CTS, AS	Used liquor bottles
250.331	RRL-S, CTS*	Approve alternate procedure
250.331	RRL	Withdraw alternate procedure
250.331	CTS	Withdraw alternate method approved by regional official
251.2	RRP	Forms prescribed
251.69	RRL-S, CTS, AS	Affixing strip stamps
251.135	RRL-S	ATF F 52A, 52B, 338
251.182	RTS-S	Application and permit, ATF F 1444 (5150.33)
251.184	RRL-S, CTS	Receipt of ATF F 5110.26
251.186	RRL-S, CTS	Receipt of ATF F 1473 (5110.16)
251.204	RTC-S	Distinctive liquor bottles
251.206	RTC-S	Disapproval of bottle
251.209	RTC-S, CTS	Used liquor bottles
251.221	RRL-S, CTS*	Approval of alternate methods
251.221	RRL	Withdrawal alternate methods
251.221	CTS	Withdrawal alternate method approved by regional official
252.2	RRP	Forms prescribed
270.41	RRP	Forms prescribed
270.45	RRL, CTS*	Approve alternate methods
270.45	RRL	Withdraw alternate methods
270.45	CTS	Withdraw alternate method approved by regional officials
270.46	RRL, CTS, AS	Approve emergency variations
270.46	RRL	Withdraw emergency variations
270.46	CTS	Withdraw emergency variations approved by regional officials
270.47	RRL-S, CTS*	Approve other business
270.212	RRL-S, CTS*	Alternative marks
275.21	RRP	Forms prescribed
275.26	RRL-S, CTS*	Approve alternate methods
275.26	RRL	Withdraw alternate methods
275.26	CTS	Withdrawal of alternate methods approved by regional officials
275.27	RRL, CTS, AS	Approve emergency variations

Regulation #	*Position*	*Subject*
275.27	RRL	Withdraw emergency variations
275.27	CTS	Withdraw emergency variations approved by regional officials
285.2	RRP	Forms prescribed
285.34a	RRL-S, CTS*	Approve alternate methods
285.34a	RRL	Withdraw alternate methods
285.34a	CTS	Withdraw alternate methods approved by regional officials
285.35	RRL, CTS, AS	Approve emergency vairations
285.35	RRL	Withdraw emergency variations
285.35	CTS	Withdraw variations approved by regional officials
290.2	RRP	Forms prescribed
290.72	RRL-S, CTS*	Approve alternate methods
290.72	RRL	Withdraw alternate methods
290.72	CTS	Withdraw alternate methods approved by regional officials
290.73	RRL, CTS, AS	Approve emergency variations
290.73	RRL	Withdraw emergency variations
290.73	CTS	Withdraw variations approved by regional officials
290.184	RRL-S, CTS*	Alternative marks
295.21	RRL-S, CTS*	Approve alternate methods
295.21	RRL	Withdraw alternate methods
295.21	CTS	Withdraw alternate methods approved by regional officials
295.22	RRL, CTS, AS	Approve emergency variations
295.22	RRL	Withdraw emergency variations
295.22	CTS	Withdraw variations approved by regional officials
295.42	RRL-S, CTS*	Alternative marks

5. *Restriction and Revocation.* The authorities in paragraph 4 may be restricted or revoked in whole or in part by a manager as applicable to his/her line of supervision. Any restriction or revocation must be made in writing to those persons affected.

6. *Redelegation.* The authorities in paragraph 4 may not be redelegated below the levels that have been established by this order. Any redelegation of a restricted or revoked authority must be made in writing to those persons affected.

7. *Revision and Update.* If it becomes necessary to redelegate authorities in this order to a lower level than the levels established, a change to this order would be needed. Submit anv suggested changes to Bureau Headquarters (Attn: RRP). This order will be updated periodically.

Dated: April 1, 1980

William T. Drake,
Assistant Director
(*Regulatory Enforcement*).

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Announcements PART VI

Announcement 80-23

Major Disaster Areas Proclaimed By The President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Dated Disaster Areas Identified by FDAA	*Affected Areas*	*Type of Disaster*
April 9, 1980 (45 F.R. 26131, as amended 45 F.R. 29889 and 31201)	LOUISIANA Parishes of: Iberville, St. Martin, St. Mary, St. Tammany, Terrebonne, and Washington	Severe storms and flooding beginning on or about March 26-31, 1980
April 16, 1980 (45 F.R. 27985)	ARKANSAS Counties of: Crittenden Faulkner, Lanoki, Polaski, and Johnson	Severe storms and flooding beginning or or about April 7, 1980
April 19, 1980 (45 F.R. 29408)	MISSISSIPPI Counties of: Adams, Forrest, George, Harrison, Jackson, Marion, Pike, Walthall	Severe storms, flooding, mud slides, tornadoes and high winds beginning on or about March 28, 1980
April 20, 1980 (45 F.R. 28486)	ALABAMA Counties of: Lee and Mobile	Severe storms, tornadoes and flooding beginning on or about April 12, 1980
May 15, 1980 (45 F.R. 35011)	MISSOURI Counties of: Pettis	Severe storms and tornadoes beginning on or about May 12, 1980
May 16, 1980 (45 F.R. 35912)	MICHIGAN Counties of: Kalamazoo, Van Buren	Severe storms and tornadoes beginning on or about May 13, 1980

Dated Disaster Areas Identified by FDAA	*Affected Areas*	*Type of Disaster*
May 21, 1980 (45 F.R. 37732)	LOUISIANA (2) Parishes of: Acadia, Calcasieu, Jefferson, Lafayette, Pointe Coupee, and Vermilion	Severe storms and flooding beginning on or about May 15, 1980
May 21, 1980 (45 F.R. 37733)	WASHINGTON All Counties	Volcanic eruption beginning on or about May 18, 1980
May 22, 1980 (45 F.R. 37732)	IDAHO Counties of: Benewah, Bonner, Boundary, Clearwater, Kootenai, Latah, Nez Perce and Shoshone	Damage resulting from the volcanic eruption of Mount St. Helens beginning on or about May 18, 1980
June 4 ,1980	NEBRASKA County of: Hall	Severe storms and tornadoes beginning on or about June 3, 1980

Announcement 80-24

Statistical tabulation of firearms manufactured in the United States and firearms exported during the first quarter of Fiscal Year 1980.

The following statistics represent the number of firearms manufactured in the United States during the First Quarter (1 October through 31 December 1979) and the number of these firearms which were subsequently exported. These figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only these weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of firearm produced	*Total production*
Pistols	170,271
Revolvers	393,054
Rifles	433,638
Shotguns and Combination Guns	299,950
Machineguns	24,482
Any Other Weapon	2

Type of firearm exported	*Quantity*
Pistols	7,783
Revolvers	39,033
Rifles	28,268
Shotguns and Combination Guns	32,740
Machineguns	24,302
Any Other Weapon	0

Announcement 80-25

Memorandum of Understanding

ATF and the Mine Safety and Health Administration (MSHA), Department of Labor signed a new revised memorandum of Understanding on April 9, 1980. Under this agreement, MSHA will perform, on behalf of ATF, inspections of explosive storage facilities and records required at the storage site of all mines subject to MSHA jurisdiction.

The Federal Mine Safety and Health Act of 1977 (Mine Act), Pub. L. 91-173, as amended by the Pub. L. 95-164, 30 U.S.C. 801 et seq., which became effective on March 9, 1978, consolidates all mine health and safety under the Mine Act, transfers MSHA to the Department of Labor, and changes the name of MESA to the Mine Safety and Health Administration (MSHA), Department of Labor. The purpose of this revision of the original Memorandum of Understanding is to substitute MSHA for MESA, make certain other changes and to execute a memorandum between MSHA and ATF. The main provisions of the agreement are:

- MSHA will enforce safety and security standards found in 27 CFR Part 181, Subpart J, and the recordkeeping requirements in Section 181.127 of Subpart G. In the event that these standards conflict with a MSHA requirement, MSHA shall enforce the regulations or standards which provide for the greater safety or security of persons in and around a mine.
- MSHA will conduct on behalf of ATF a compliance inspection of persons holding licenses and permits under 18 U.S.C. 841 et seq., who also are subject to the jurisdiction of MSHA, during each regular MSHA inspection and investigation of mine operations. The mine operator will be cited for violations of ATF regulations observed during both a regular and other inspection. These compliance inspections will consist of inspecting all storage facilities and required records at storage facilities under the applicable regulations of 27 CFR Part 181. The results of inspection conducted on behalf of ATF shall be promptly submitted to ATF. In the event that further administrative or judicial action is necessary, such action will be taken by ATF with the assistance of the MSHA inspector, where needed.
- ATF will make inspections of applicants (and their explosive storage facilities) for licenses and permits under 18 U.S.C. 841 et seq., and the implementing regulations and rulings. The results of these inspections will be promptly given to MSHA.
- MSHA and ATF will cooperate in the development of uniform standards for the safe and secure storage of explosive materials and procedures relating to inspections of explosive licensees and permittees, to the greatest extent possible. They will also maintain liaison and cooperation with each other in regard to their respective responsibilities under the Federal mine safety programs and under 18 U.S.C. 841 et seq., and each agency will furnish to the other all information of interest to the other relating to explosive materials.
- This Memorandum of Understanding shall continue from April 9, 1980: Provided, however, that it may be terminated at any time by either party giving written notice of termination to the other party at least (90) days prior to the date fixed on such notice.

Announcement 80-26

Revocation of Permit

ATF has revoked the specially denatured alcohol permit of Gordon Gordon Company, Chicago, Illinois. The permittee failed to timely prepare and maintain, at the address stated on the permit, adequate and accurate records as required by 26 U.S.C. 5275 of the Internal Revenue Code

Announcement 80-27

Revocation of Permit

The specially denatured alcohol permit held by Joseph M. and Dorothy L. Uhorchak, d/b/a Hatten Hill Pharmacal Co., Sayville, New York, has been revoked by ATF in accordance with 26 U.S.C. 5271. The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-28

Offer in Compromise

A distiller, Mar-Salle Chicago Company, Chicago, Illinois, violated 26 U.S.C. sections 5001, 5005, 5178, 5201, 5202, 5204, 5205, 5206, 5207, 5211, 5212, 5214, 5231, 5232, 5301, 5363, 5373, 5555, and 6065. The proprietor failed to establish adequate controls governing the everyday operations of the DSP. These violations included failure to: replace cap seals on tanks, gauges, and pipelines; provide safe access to parts of tanks and DSP premises; extend terms of bond to cover spirits withdrawn taxfree as samples or for lab analysis; provide an adequate government office, and various other recordkeeping, marking and gauging requirements. ATF accepted an offer of $2,500 in compromise of the civil and criminal liabilities incurred.

Announcement 80-29

Offer in Compromise

A wholesaler, Ace Beer Distribution Co., Inc., Lexington, Kentucky, violated the provisions of 205(b)(3) of the FAA Act. The permittee induced retail dealers of alcoholic beverages to purchase its products to the exclusion of other alcoholic beverages sold or offered for sale by others in interstate or foreign commerce. In compromise of the criminal and civil liabilities incurred, ATF has accepted an offer of $1,500.

Announcement 80-30

Offer in Compromise

ATF has accepted an offer of $11,559.17 in compromise from Castleton Beverage Corporation, Jacksonville, Florida. The proprietor failed to timely file Form 4077, Distilled Spirits Tax return and failed to timely pay taxes imposed by 26 U.S.C. 5001(a)(1).

Announcement 80-31

Offer in Compromise

Widmer's Wine Cellars, Inc., Maples, New York, was found in violation of 26 U.S.C. 5367 and 5370 (Internal Revenue Code) and of 27 U.S.C. 205(e) (FAA Act) for its repeated failure to make correct entries on records and reports, repeated failures to report losses by casualty, and its misuse of labels containing incorrect information. ATF accepted an offer of $10,000 in compromise of the liabilities incurred.

Announcement 80-32

Offer in Compromise

As a result of the Bureau's voluntary disclosure program, Blitz-Weinhard Company, Portland, Oregon, submitted an offer in compromise of a violation of the FAA Act. The brewer violated 27 U.S.C. 205(b)(3) by directly and indirectly furnishing free draft beer equipment to a number of retailers in the states of Oregon and Washington, thereby, inducing said retailers to purchase its products to the exclusion, in whole or in part, of competing products sold or offered for sale in interstate commerce. ATF accepted an offer of $3,500 in compromise of the violation.

Announcement 80-33

Offer in Compromise

ATF accepted an offer of $2,500 in compromise from the Paddington Corporation, New York, New York, for violations under 27 U.S.C. 205(b)(3) and (4) of the FAA Act. The wholesaler and importer voluntarily disclosed that it directly and indirectly furnished inducements to retailers and retail liquor dealer associations and indirectly through an affiliate, provided inducements in the form of cash discounts to retailers of distilled spirits for the purpose of influencing said retailers to purchase its products to the exclusion of competing products offered for sale in interstate commerce.

Announcement 80-34

Offer in Compromise

Wholesale malt liquor dealer, J. W. Jackson Beverage Company, Wilmington, North Carolina, was found in violation of 27 U.S.C. 205(b)(3) of the FAA Act. The permittee directly and indirectly induced retailers of malt beverages to purchase its products to the exclusion of products sold or offered for sale by others in interstate commerce by acquiring an interest in the personal property of retailers; loaning money to retailers; and maintaining and installing equipment free of charge for retailers. Also, the permittee violated 27 CFR 1.42 by failing to report changes in officers and directors in two instances. ATF accepted an offer of $6,000 in compromise of the civil and criminal liabilities incurred.

Announcement 80-35

Offer in Compromise

ATF has accepted an offer of $6,500 in compromise of the civil and criminal liabilities incurred by Bacardi Corporation, San Juan, Puerto Rico. The distiller made numerous sales of alcoholic beverages on consignment or under conditional sale or with the privilege of return to a number of retail liquor dealers in violation of 27 U.S.C. 205 (d) of the FAA Act.

Announcement 80-36

Offer in Compromise

ATF has accepted an offer of $1,500 in compromise of the criminal and civil liabilities incurred by Beverage Sales, Inc., Lake Charles, Louisiana. The wholesale malt beverage dealer violated 27 U.S.C. 205(b)(3) of the FAA Act and 27 CFR 6.20 by inducing retailers to purchase its products to the exclusion of products sold or offered for sale by others in interstate commerce by reason of loaning three such retailers keg boxes and furnishing and installing an outside sign to one retailer.

Announcement 80-37

Offer in Compromise

A specially denatured alcohol user, Contact Industries, Inc., Elizabeth, New Jersey, was found in violation of 26 U.S.C. 5271(d) and 5275. An inspection disclosed that the proprietor failed to (1) report changes in corporate officers; (2) prepare and maintain accurate records; and (3) obtain prior authorization for changes in formulas and labels. An offer of $1,000 was accepted by ATF in compromise of the penalties imposed by 26 U.S.C. 5687.

Announcement 80-38

Offer in Compromise

A tax-free alcohol user, The Carle Foundation Hospital, Urbana, Illinois, was found in violation of 26 U.S.C. 5001, 5121, 5214, and 5271. The permittee transferred and sold tax-free alcohol for unauthorized purposes; failed to pay tax due with regard to unauthorized uses; sold tax-free alcohol without payment of special occupational tax; failed to keep records required to reflect disposition of tax-free alcohol; failed to record losses disclosed by inventory, and failed to take required monthly physical inventory. ATF accepted an offer of $3,000 in compromise of the violations incurred.

Announcement 80-39

Offer in Compromise

National Distillers and Chemical Corporation, Cincinnati, Ohio, was found in violation of 26 U.S.C. 5201, 5301 and 27 U.S.C. 205(e) of the FAA Act. The distiller failed to: (1) properly label spirits with regard to proof and fill; (2) properly mark and stamp packages filled on bottling premises and stored on control premises and failed to cancel stamps on other such packages; (3) properly identify and segregate controlled stock and failed to maintain records of controlled stock in the prescribed form and manner; (4) keep sufficient accurate daily records; and (5) bottled domestic spirits on premises which were under Customs supervision and improperly marked these spirits. ATF accepted an offer of $35,000 in compromise of the criminal and civil liabilities incurred.

Announcement 80-40

Offer in Compromise

ATF has accepted an offer in compromise of $10,000 from Crescent Manufacturing Co., Seattle, Washington. The proprietor violated 26 U.S.C. 5132 by filing claims and obtaining drawback of tax on products which were not made in accordance with approved formulas.

Announcement 80-41

Offer in Compromise

Pueblo International, Inc., a trade buyer in Carolina, Puerto Rico, was found in violation of 27 U.S.C. 205 (d) of the FAA Act. An inspection conducted by ATF disclosed that Pueblo purchased liquor on consignment with the right of return from various wholesaler suppliers. ATF accepted an offer of $4,000 in compromise of the violations incurred.

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BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
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ALCOHOL, TOBACCO AND FIREARMS

980-3

No. 1980—3
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Bureau of Alcohol, Tobacco and Firearms

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NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

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Treasury Decisions PART I

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY.

T.D. ATF-72

27 CFR Part 9

Augusta Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final rule; Treasury decision.

SUMMARY: This rule establishes a viticultural area in St. Charles County, Missouri, named "Augusta." The Bureau of Alcohol, Tobacco and Firearms feels that the establishment of the Augusta viticultural area and the subsequent use of its name as an appellation of origin in wine labeling and advertising will help consumers of wine to better identify Augusta wines.

EFFECTIVE DATE: June 20, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas Minton, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37671, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographical characteristics. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

In response to a petition, ATF published a notice of proposed rulemaking in the FEDERAL REGISTER (44 FR 41487) proposing a delimited grape-growing area surrounding Augusta, Missouri, as an American viticultural area. ATF solicited public comment concerning the proposed area and held a public hearing to discuss the proposed area on November 1, 1979, in Augusta, Missouri.

WRITTEN COMMENTS

ATF received 10 written comments in response to its notice of proposed rulemaking. These 10 comments were of a general nature and favored the establishment of the Augusta viticultural area. Most of the comments mentioned the history of the Augusta area in grape production and winemaking and indicated that wines from the Augusta area are of a unique nature.

PUBLIC HEARING

Thirteen people commented at the public hearing. Following is a summary of their comments.

Historical Evidence

Several commenters presented evidence that the growing region has a long grape-growing and wine-producing history. A number of references note the Augusta area. These sources also refer to this grape-growing area by the name of the town, Augusta. Therefore, ATF believes that the Augusta viticultural area has a unique historical identity and that the name "Augusta" is the most appropriate name for the area.

Geographical Features

In accordance with 27 CFR 4.25a (e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding grape-growing areas. Much of the testimony at the public hearing concerned this requirement.

Based on this testimony, ATF has determined that the Augusta area is distinguishable from the adjacent areas by climatic variances, particularly in temperature, caused by the physiographic features of the Augusta area. The bowl-like ridge of hills to the west, north, and east and the Missouri River on the southern edge of the area provide a setting which differentiates the local climate of the Augusta area from the local climate of the surrounding areas.

Boundaries

ATF is using two county lines, a township line, and a range line as the boundaries of the Augusta area. A number of comments at the public hearing concerned these boundaries.

Some commenters felt that the use of artificial lines such as county, range, and township lines to describe the area was improper. They argued that the use of survey lines to delineate an area which should be based on geographical factors was contradictory. They argued that since viticultural areas are intended to be distinct from political subdivisions they should be based on viticultural factors, and the use of county, range, and township lines was, therefore, inappropriate.

ATF feels that the use of political boundaries and survey lines is appropriate where they coincide with the distinguishing geographical features or where they reasonably describe an area which possesses a distinguishing viticultural characteristic. In the case of the Augusta area, the boundaries in the regulations delineate an area with distinguishing climatic and topographical characteristics.

Miscellaneous Comments

One commenter felt that viticultural areas would increase the operating costs and regulatory burdens on both the industry and Government. He felt that added recordkeeping concerning the origin of grapes used in a particular wine would be too costly.

ATF disagrees with this viewpoint. Wine producers must presently keep records concerning the origin of the wine they produce. The recordkeeping requirements concerning the origin of grapes used in a particular wine are the same whether the appellation of origin on the label is the name of a State, county or viticultural area. Also, the use of viticultural area appellations, in most cases, would be optional. Proprietors will be required to use a viticultural area appellation of origin after December 31, 1982, only if the wine is labeled as "Estate Bottled."

A commenter also stated that the labeling and percentage requirements concerning the use of viticultural area appellations of origin would be too difficult for ATF to enforce. ATF again disagrees. Labeling requirements concerning the use of appellations of origin have been in effect since 1935. ATF has proven its ability to monitor the origin of wines produced in the United States. The addition of viticultural areas will not make enforcement of labeling regulations more difficult. On the contrary, the establishment of viticultural areas with definite boundaries will facilitate enforcement.

A commenter suggested that the establishment of the Augusta viticultural area would give an unfair commercial advantage to wineries within the area or to wineries producing wine from grapes grown in the area.

ATF does not wish to give the impression that by approving the Augusta viticultural area, it is approving the quality of the wine from that area. ATF is approving the Augusta area as being viticulturally different from the surrounding areas, not better than other areas. Any commercial advantage which Augusta wineries may gain can only be substantiated by consumer acceptance of Augusta wines. ATF may not disapprove a viticultural area because consumers may find wines from that area appealing. By approving the Augusta viticultural area, ATF is allowing producers of Augusta wines to claim a distinction on labels and in advertisements as to the origin of the grapes used in the production of the wine. ATF will not allow producers of Augusta wines to claim that their wines are better because they originated from an approved viticultural area.

A commenter stated that the Missouri grape-growing industry was still too young to determine which geographical features distinguished one area from another area. He claimed that as experience with French-American hybrid grapes increased, Missouri grape growers and vintners would be better able to determine which areas within Missouri are distinctive. Therefore, he suggested ATF consider the petition for the Augusta viticultural area sometime in the future rather than the present.

ATF believes that there is no valid reason to delay the approval of the Augusta viticultural area. While viticultural knowledge is continually evolving, ATF believes that substantial knowledge exists indicating that differences in climate and other geographical factors do affect the growing conditions found within particular growing regions. Although distinctions in growing conditions may be mitigated by viticultural practices, these distinctions may also create differences in the grapes grown. Further, as the knowledge concerning viticultural areas is evolving, any regulations issued by ATF concerning viticultural areas are subject to change.

Accordingly, 27 CFR Part 9 is amended as proposed.

DRAFTING INFORMATION

The principal author of this document is Thomas L. Minton of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

AUTHORITY AND ISSUANCE

This Treasury decision is issued under the authority of 27 U.S.C. 205.

REGULATIONS

On the basis of the foregoing, 27 CFR Part 9 is amended by the addition of § 9.22 as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The table of sections in 27 CFR Part 9, Subpart C, is amended to include the title of § 9.22. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

9.22 Augusta.

2. Subpart C is amended by adding § 9.22 as amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.22 Augusta.

(a) *Name.* The name of the viticultural area described in this section is "Augusta."

(b) *Approved maps.* The approved maps for the Augusta viticultural area are two U.S.G.S. maps. They are titled—

(1) "Washington East, Missouri", 7.5 minute quadrangle; and

(2) "Labadie, Missouri", 7.5 minute quadrangle.

(c) *Boundaries.* The boundaries of the Augusta viticultural area are located in the State of Missouri and are as follows:

(1) The beginning point of the boundary is the intersection of the St. Charles County line, the Warren County line and the Franklin County line.

(2) The western boundary is the St. Charles County-Warren County line from the beginning point to the township line identified on the approved maps as "T45N/T44N."

(3) The northern boundary is the township line "T45N/T44N" from the St. Charles County-Warren County line to the range line identified on the approved maps as "R1E/R2E."

(4) The eastern boundary is the range line "R1E/R2E" from township line "T45N/T44N" extended to the St. Charles County-Franklin County line.

(5) The southern boundary is the St. Charles County-Franklin County line from the extension of range line "R1E/R2E" to the beginning point.

Signed: June 4, 1980.

G. R. DICKERSON,
Director

Approved: June 9, 1980.

RICHARD J. DAVIS,
Assistant Secretary
(Enforcement and Operations)

(Filed by the Office of the Federal Register on June 19, 1980, 8:45 a.m., and published in the Federal Register for June 20, 1980, 45 F.R. 41632)

Subpart B—TOBACCO

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-73

27 CFR Part 296

Regulations Relating to the Distribution of Cigarettes

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final rule: Treasury decision.

SUMMARY: This Treasury decision requires each person who distributes more than 60,000 cigarettes in a single transaction to keep suitable commercial records of each disposition of more than 60,000 cigarettes. This rule imple-

ments the recordkeeping provisions of Pub. L. 95-575. The Bureau of Alcohol, Tobacco and Firearms feels that records of disposition maintained by persons who distribute more than 60,000 cigarettes in a single transaction would be useful in tracing the movement of contraband cigarettes and would help curtail the illicit traffic of cigarettes between States.

EFFECTIVE DATE: September 19, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas L. Minton, Research and Regulations Branch, 202-566-7626.

SUPPLEMENTARY INFORMATION:

BACKGROUND INFORMATION

On January 15, 1980, ATF published Notice No. 334 in the Federal Register (45 FR 2855) which proposed amending 27 CFR Part 296, by adding Subpart F—Distribution of Cigarettes. The purpose of this proposal was to implement the recordkeeping requirements of Pub. L. 95-575.

Interested persons were given until February 29, 1980, to submit relevant data, views, or arguments regarding this proposal. This Treasury decision is the result of that proposal.

DISCUSSION OF REGULATIONS

These regulations amend 27 CFR Part 296—Miscellaneous Regulations Relating to Cigars, Cigarettes, and Cigarette Papers and Tubes by adding a new Subpart F—Distribution of Cigarette. The requirements of this new subpart apply to each distributor of cigarettes. A "distributor" is any person who sells, ships, issues, gives, transfers, or otherwise disposes of more than 60,000 cigarettes in a single transaction. Persons who distribute cigarettes in single transactions consisting of 60,000 or less are not considered a "distributor" under these regulations and are not subject to the requirements of this subpart.

Pub. L. 95-575 makes it unlawful for most persons to purchase, receive, possess, transport, ship, sell or distribute more than 60,000 cigarettes in a single transaction on which the State cigarette tax has not been paid. However, the law does allow certain persons to possess and handle cigarettes on which the State tax has not been paid. These persons are referred to in the regulations as "exempted persons." An exempted person is any person who—

(1) Holds a permit as a manufacturer of tobacco products or as an export warehouse proprietor;

(2) Operates a customs bonded warehouse;

(3) Is an agent for a tobacco products manufacturer, export warehouse proprietor, or customs bonded warehouse operator;

(4) Is a common or contract carrier transporting cigarettes under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(5) Is licensed by the State in which he possesses cigarettes to account for and pay cigarette taxes imposed by that State and who has complied with the accounting and payment requirements with respect to any cigarettes involved;

(6) Is an agent of the United States, an individual State or a political subdivision of a State and who has possession of cigarettes in connection with performance of official duties; or

(7) Operates within a foreign-trade zone established under 19 U.S.C. 81b, when the cigarettes involved have been entered into the zone under zone-restricted status, or in respect to foreign cigarettes, have been admitted

into the zone but which have not been entered into the United States.

Each distributor of cigarettes is required to show certain information on commercial records relating to each disposition of more than 60,000 cigarettes. The type of information required to be kept depends on whether the parties involved in the transaction are "exempted persons."

DISCUSSION OF COMMENTS

Several written comments were received in response to the notice of proposed rulemaking. Most of the commenters agreed with the objectives of the regulations and were concerned about the detrimental effects which the traffic in contraband cigarettes has had upon the States involved and on the legitimate cigarette industry. Some commenters suggested changes and voiced questions concerning the regulations. A discussion of the comments follows.

Definition of Contraband Cigarettes

One commenter suggested that the definition of "contraband cigarettes" be revised to exclude untax-paid cigarettes used for experimental purposes. Under 26 U.S.C. 5704(a), cigarettes used for experimental purposes are exempt from Federal excise taxes. Section 270.232, 27 CFR, allows, with the prior approval of ATF, the shipment of cigarettes exempt from Federal taxes to research facilities. The commenter felt that these cigarettes would be subject to seizure as contraband and should, therefore, be excluded from the definition of contraband cigarettes.

ATF has decided against modifying the definition of contraband cigarettes for several reasons. First, cigarettes used for experimental purposes cannot be excluded from the contraband cigarette category since the Congress enacted a specific definition of the term "contraband cigarettes."

Further, ATF does not believe that the definition of contraband cigarettes will adversely affect the distribution of cigarettes used for experimental purposes. The exemption of Federal taxes on cigarettes used for experimental purposes is irrelevant to the contraband cigarette definition. Rather, the question of whether cigarettes are contraband revolves on the applicable *State* taxes. Therefore, in States which do not impose a tax on cigarettes used for experimental purposes, these cigarettes cannot be contraband. However, if a State does impose a tax on cigarettes used for experimental purposes, then all applicable State requirements must be complied with prior to disposing of the cigarettes in quantities of more than 60,000 to other than an exempted person.

Definition of Exempted Person

(1) *Agents.* Two commenters suggested that the definition of "exempted person" be broadened to include all employees or representatives who may not be actual agents of a tobacco products manufacturer, export warehouse proprietor or customs bonded warehouse operator but are acting on their behalf. This proposed definition would include operators of private and public warehouses storing cigarettes for a manufacturer and contract distributors of complimentary products.

The category of persons who may possess or handle untaxpaid cigarettes are specifically listed in the law. For this reason, ATF is unable to broaden the definition of "exempted person" to include representatives of manufacturers, export warehouse proprietors, and customs bonded warehouse operators who are not agents of these principals.

However, ATF considers employees acting on behalf of their employers to be agents of their employers. Also, most manufacturers often use public warehouses as their regional distribution facilities. The manufacturer usually stores its cigarettes in the public warehouse for shipment to accounts in the particular region where the warehouse is located. The manufacturer maintains title to the cigarettes and is responsible for the sale of the cigarettes, while the warehouse operator makes disposition of the cigarettes by releasing them for delivery to the customers of the manufacturer as required by the manufacturer. In these cases, the warehouse operator is acting as an agent for the manufacturer and is, therefore, considered an exempted person.

(2) *Government employees.* One commenter felt the regulations should be clarified to include expressly the employees of the Puerto Rican, the District of Columbia, and the Virgin Islands governments as exempted persons in the same category as "State" employees. ATF agrees. Pub. L. 95-575 includes these jurisdictions in the statutory definition of the term "State." ATF fully intended the regulations to include employees of these jurisdictions in the same category as employees of any State. In order to eliminate any confusion over this issue, § 296.143 is changed to include the statutory definition of the term "State." The term "State" is defined in the regulations as, "a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands."

(3) *Carriers.* Section 296.143 basically defines a "common or contract carrier" as a carrier holding a valid operating authority under the Interstate Commerce Act, or an equivalent operating authority from a regulatory agency of the United States or of any State.

One commenter stated that some States do not require any operating authority for local for-hire carriers operating within a limited jurisdiction. The commenter stated that these local unregulated dray operators often service the cigarette industry by conveying untaxpaid cigarettes from the manufacturer's distribution facility to the licensed wholesaler. By doing so, however, the unregulated carriers may be in violation of the law by possessing untaxpaid cigarettes since these carriers are not exempted persons. The commenter suggested expanding the definition of common or contact carrier to include local carriers operating within an unregulated jurisdiction in accordance with the laws of that jurisdiction.

The definition of common or contract carrier in § 296.143 parallels the statutory definition in Pub. L. 95-575. The law is specific. The legislative history of the law shows that the Senate bill, the House bill, and the conference committee recommendation intended to limit the independent transportation of untaxpaid cigarettes in quantities of more than 60,000 to regulated carriers. Therefore, the definition of common or contract carrier cannot be expanded. Local unregulated carriers may transport untaxpaid cigarettes only when acting as an agent for a manufacturer of tobacco products, export warehouse proprietor, or customs bonded warehouse operator. However, ATF believes that a local unregulated carrier transporting a manufacturer's untaxpaid cigarettes to the manufacturer's customer in the same state under the manufacturer's invoice would be acting as an agent for the manufacturer in making that delivery.

(4) *Licensed distributors.* One commenter questioned the meaning of the language in the definition of "exempted person" requiring that the distributors licensed by a State account for and pay the applicable State tax. This language states that a licensed cigarette distributor qualifies as an ex-

empted person only when the distributor "has complied" with accounting and payment requirements relating to the State license and with respect to the cigarettes involved.

The commenter felt that because the definition is phrased in the past tense, it could pose a problem for the cigarette distributor who is in compliance with accounting and payment requirements at a specific instant yet has not complied by making actual payment or by making an actual accounting at the moment the licensed person takes possession of the untaxpaid cigarettes. The commenter cited an example where a State may permit a licensed distributor to hold cigarettes without the application of State indicia for a specified period of time after receipt, usually not exceeding 48 hours. Also, the commenter felt that a problem may arise where special circumstances or emergencies may dictate that the compliance requirements of the State cannot be met.

The language in the definition concerning a licensed distributor's compliance with State requirements was adopted from the law. ATF feels that the present language should not pose a problem. The definition does not require a licensed distributor to immediately account for and pay the State tax in order to be an exempted person unless the State requires immediate accounting and payment. The distributor must have complied with the State's accounting and payment *requirements*. If the State's requirements allow a licensed distributor to hold cigarettes before accounting for and paying the applicable taxes, then at any specific instant during the allowed holding period, the distributor has complied with the State's accounting and payment requirements even though the distributor has not yet accounted for or paid the tax.

A similar interpretation applies in cases where an emergency or special circumstance causes a deviation from the normal compliance requirements of the State. Where the State allows a deviation from normal compliance requirements in emergencies or under special circumstances, the distributor has complied if the allowed procedures have been followed. In all cases, the licensed distributor must have complied wtih all applicable State accounting and payment requirements up to the specific instant in question.

Recordkeeping Requirements

A commenter suggested that a distributor should not be required to maintain records concerning dispositions of cigarettes if the dispositions are carried out on behalf of a tobacco products manufacturer and the manufacturer's records show the required information concerning the dispositions. This commenter also stated that the retention period in § 296.150 was much longer than the period for which these records are normally maintained by public warehouse operators. The commenter felt that the required retention period would place an undue burden on some distributors.

Section 2343(a), 18 U.S.C., places the recordkeeping requirements on "Any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction * * *." Therefore each distributor must meet the recordkeeping requirements for qualifying dispositions. Also, the purpose of the recordkeeping requirement is to assist ATF in tracing the movement of contraband cigarettes. By maintaining disposition records at a location other than the business premises, a possible violator could hamper an investigation.

Section 296.150 requires each distributor to maintain records of disposition for 3 years following the close of the calendar year in which the records are made. ATF feels that this retention period will not normally impose a burden on most distributors. Tax-related records are customarily retained over a period of several years. Further, by allowing disposition records to be discarded shortly after a cigarette disposition is made, ATF would lose an important investigative tool specifically provided for in the authorizing legislation.

However, ATF realizes that situations may arise where a distributor's required records may be duplicated by the tobacco products manufacturer. Therefore a provision has been added to § 296.150 which permits, in certain circumstances, distributors to apply for permission to employ a shorter record retention period. This provision applies where the distributor is an agent of a tobacco products manufacturer, the manufacturer will keep the required record of the distributor's dispositions for the full retention period, and a shorter retention period will not unduly hinder the administration or enforcement of these regulations. Each distributor proposing to employ a shorter retention period must apply to the regional regulatory administrator of the region in which the distributor is located. A definition of "regional regulatory administrator" is added to § 296.143.

Other Comments

(1) *Name of purchaser.* A commenter felt that the requirement to show the full name of the purchaser on records of disposition could cause confusion to distributors in cases where there may not be a purchaser. This confusion could arise where cigarettes are being shipped to research facilities, sampling contractors, or public warehouses for storage until sold. In cases such as these, the recipient is not a purchaser.

ATF agrees that a situation may arise where the recipient is not a purchaser. Therefore, § 296.147(a)(1)(i) is changed to require the name of the recipient of the cigarettes when there is no purchaser. Section 296.147 (a)(1)(i) now reads—

"(i) The full name of the purchaser (or the recipient if there is no purchaser);". Also, a parenthetical phrase is added to § 296.147(a)(2)(i) to indicate that the name of the purchaser is not required when there is no purchaser. Section 296.147(a)(2)(i) now reads—

"(i) The full name of the purchaser (if any);"

(2) *Government agencies and instrumentalities.* The government instrumentality which handles cigarettes for sale on military reservations requested specific regulatory language exempting it from the recordkeeping requirements of this subpart.

ATF agrees that government agencies and instrumentalities are exempt from the requirements of this rule. The conference report indicates that Congress has intended the definition of "person" in 1 U.S.C. 1 to apply in this case. Government agencies and instrumentalities are not included in that definition.

Also government agencies and instrumentalities are not included in the definition of "person" in these regulations. Since the regulatory definition of "person" is clear, ATF does not feel that any further specific regulatory language is necessary.

(3) *Government access to records.* One commenter objected to § 296.153 (a) which permits any ATF officer to enter the business premises of any cigarette distributor to inspect the records required by these regulations pursuant to either an administrative inspection warrant or a criminal search warrant. The commenter felt that this rule was an "attempt by regulations to change the statutory requirements for a 'search

warrant' into a regulatory requirement for an 'administrative inspection warrant.' "

Public Law 95-575 authorizes ATF officers, as agents of the Secretary of Treasury, to enter a distributor's premises upon that distributor's consent or in accordance with a "duly issued search warrant." There is no specific mention of an administrative inspection warrant in the law itself. The legislative history of both the Senate bill, S. 1487, and the House bill, H.R. 8853, indicate that the search warrant requirement was intended to bring the law in line with the Supreme Court's decision in *Marshall v. Barlow's, Inc.*, 436 U.S.C. 307(1978), wherein the Court set out guidelines for the use of administrative inspection warrants. *See Senate Rep. No. 95-962*, 95th Cong., 2d Sess. 18 (1978); and *H.R. Rep. No. 95-1629*, 95th Cong., 2d Sess. 8 (1978). Therefore, these regulations reflect the Congressional intent by authorizing the use of an administrative inspection warrant.

(4) *Splitting dispositions*. The Departments of the Revenue of two States submitted comments concerning the language in § 296.146 relating to a cigarette distributor dividing a single agreement for the disposition of more than 60,000 cigarettes into the delivery of smaller components of 60,000 cigarettes in order to avoid the recordkeeping requirements of this rule.

One state tax commissioner stated that experience based on the results of a recent joint investigation conducted with ATF, indicates that the splitting of cigarette dispositions by distributors is currently being practiced to remove shipments of cigarettes from the jurisdiction of Pub. L. 95-575. A representative of the other State tax agency questioned the language of § 296.146 and asked for clarification of "what constitutes evidence of a distributor's intent to split cigarette dispositions to avoid the regulatory recordkeeping requirements?".

The regulations do not preclude a distributor from dividing a single agreement for the disposition of more than 60,000 cigarettes into smaller components of 60,000 cigarettes or less; however, the distributor must record the required information for each component of the agreement. If a distributor fails to keep the required records for each component of an agreement for the disposition of more than 60,000 cigarettes, the distributor would be in violation of the regulations. The word "agreement" is a term of art in the field of contract law, particularly under the uniform Commercial Code, and is susceptible to a uniform application by the courts. Even so, ATF cannot make a general or universal statement of what constitutes evidence of a distributor's intent to avoid the regulatory requirements of this rule. The evidence indicating any violation of the requirements cannot be defined outside the context of a particular case.

(5) *Forfeitures*. A commenter requested that specific provisions be implemented which would allow the affected State to recover lost revenue through the resale of contraband seized in accordance with these regulations.

While the affected State may be allowed through its concurrent jurisdiction to seize contraband involved in a violation of State tax laws, contraband seized by ATF for a violation of 18 U.S.C. Chapter 114 must be disposed of in accordance with 27 CFR Part 72—Disposition of Seized Personal Property. Section 2344(c), 18 U.S.C., does not require that the seizure of contraband subject to seizure and forfeiture under both State and Federal law be accomplished under the Federal statute. Nevertheless, regulatory language permitting the automatic transfer of property seized by

ATF to the affected State is not authorized.

Changes in the Final Rule

The following changes are made in the final rule:

(1) Definitions of "state" and "regional regulatory administrator" are added to § 296.143.

(2) Sections 296.147(a)(1)(i) and 296.147(a)(2)(i) are changed to clarify the recordkeeping requirements where the recipient of the cigarettes may not be the purchaser.

(3) A provision permitting, a distributor, in certain circumstances, to retain the required records for a shorter retention period is added to § 296.150.

Drafting Information

The principal author of this document is Thomas L. Minton of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This Treasury decision is issued under the authority of 18 U.S.C. 2346.

Regulations

On the basis of the foregoing, 27 CFR Part 296 is amended as follows:

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

1. The table of sections in 27 CFR Part 296 is amended to include the addition of a new Subpart F as follows:

* * * * *

Subpart F—Distribution of Cigarettes

GENERAL

Sec.
296.141 Scope of subpart.
296.142 Territorial extent.
296.143 Meaning of terms.

RECORDS

296.146 General requirements.
296.147 Required information.
296.150 Retention of records.

OTHER PROVISIONS RELATING TO THE DISTRIBUTION OF CIGARETTES

296.153 Authority of ATF officers to enter business premises.

PENALTIES AND FORFEITURES

296.154 Penalties.
296.155 Forfeitures.

* * * * *

2. Part 296, 27 CFR, is amended by the addition of Subpart F—Distribution of Cigarettes. Subpart F reads as follows:

Subpart F—Distribution of Cigarettes

Authority: 18 U.S.C. 2341-2346 unless otherwise noted.

GENERAL

§ 296.141 Scope of subpart.

The regulations in this subpart relate to the distribution of cigarettes in excess of 60,000 in a single transaction.

§ 296.142 Territorial extent

The provisions of the regulations in this subpart apply in the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

§ 296.143 Meaning of terms.

When used in this subpart, terms are defined as follows in this section. Words in the plural shall include the singular, and vice versa. Words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this subpart.

Business premises. When used with respect to a distributor, the property on which the cigarettes are kept or stored. The business premises includes the property where the records of a distributor are kept.

Common or contract carrier. A carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State.

Contraband cigarettes. Any quantity of cigarettes in excess of 60,000, if—

(a) The cigarettes bear no evidence of the payment of applicable State cigarette taxes in the State where the cigarettes are found;

(b) The State in which the cigarettes are found requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes; and

(c) The cigarettes are in the possession of any person other than an exempted person.

Disposition. The movement of cigarettes from a person's business premises, wherever situated, by shipment or other means of distribution.

Distribute. To sell, ship, issue, give, transfer, or otherwise dispose of.

Distributor. Any person who distributes more than 60,000 cigarettes in a single transaction.

Exempted person. Any person who is—

(a) Holding a permit issued pursuant to Chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor;

(b) Operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555);

(c) An agent of a tobacco products manufacturer, an export warehouse proprietor, or an operator of a customs bonded warehouse;

(d) A common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of the cigarettes;

(e) Licensed or otherwise authorized by the State, in which he possesses cigarettes, to account for and pay cigarette taxes imposed by that State; and who has complied with the accounting and payment requirements relating to his license or authorization with respect to the cigarettes involved; or

(f) An agent of the United States, of an individual State, or of a political subdivision of a State and having possession of cigarettes in connection with the performance of official duties.

(g) Operating within a foreign-trade zone established under 19 U.S.C., section 81b, when the cigarettes involved have been entered into the zone under zone-restricted status or, in respect to foreign cigarettes, have been admitted into the zone but have not been entered in the United States.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Regional Regulatory Administrator. The regional official in charge of regulatory enforcement.

State. A State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands.

RECORDS

§ 296.146 General requirements.

Each distributor of cigarettes shall keep copies of invoices, bills of lading, or other suitable commercial records relating to each disposition of more than 60,000 cigarettes. Dividing a single agreement for the disposition of more than 60,000 cigarettes into the delivery of small components of 60,000 cigarettes or less does not exempt the distributor from the recordkeeping requirements of this subpart. The distributor shall include the information prescribed in § 296.147 in his commercial records of disposition.

§ 296.147 Required information.

(a) *Distributors who are exempted persons.* Each distributor who is an exempted person as defined in § 296. 143 shall show the following information in his commercial records.

(1) For each disposition of more than 60,000 cigarettes to an exempted person; or for each disposition of more than 60,000 cigarettes to a person who is not an exempted person and which is delivered by the distributor to the recipient's place of business, the distributor shall show on dated records—

(i) The full name of the purchaser (or the recipient if there is no purchaser);

(ii) The street address (including city and state) to which the cigarettes are destined; and

(iii) The quantity of cigarettes disposed of.

(2) For each disposition of more than 60,000 cigarettes, other than the dispositions specified in paragraph (a) (1) of this section, the distributor shall show on dated records—

(i) The full name of the purchaser (if any);

(ii) The name, address (including city and state), and signature of the person receiving the cigarettes;

(iii) The street address (including city and state) to which the cigarettes are destined;

(iv) The quantity of cigarettes disposed of;

(v) The driver's license number of the individual receiving the cigarettes;

(vi) The license number of the vehicle in which the cigarettes are removed from the distributor's business premises;

(vii) A declaration by the individual receiving the cigarettes of the specific purpose of receipt (such as personal use, resale, delivery to another person, etc.); and

(viii) A declaration by the person receiving the cigarettes of the name and address of his principal when he is acting as an agent.

(b) *Distributors who are not exempted persons.* Each distributor who is not an exempted person as defined in § 296.143 shall show on dated commercial records the information specified in paragraphs (a) (2) (i)—(a) (2) (viii) of this section for each disposition of more than 60,000 cigarettes.

§ 296.150 Retention of records.

(a) *General.* Each distributor of cigarettes shall retain the records required by §§ 296.146 and 296.147 for three years following the close of the year in which the records are made. The distributor shall keep the required records on his business premises.

(b) *Shorter retention periods.* The regional regulatory administrator may, pursuant to an application submitted by a distributor, approve a shorter retention period where—

(1) The distributor requesting the shorter retention period is an agent of a tobacco products manufacturer;

(2) The tobacco products manufacturer will keep the required record for each disposition of more than 60,000 cigarettes from the agent's premises for the full retention period specified in paragraph (a) of this section; and

(3) The approval of a shorter retention period will not unduly hinder the administration of enforcement of this subpart.

(c) *Application requirements.* Each distributor proposing to employ a shorter retention period shall submit a written application, in duplicate, to the regional regulatory administrator of the region in which the distributor is located. A distributor may not employ a shorter retention period until approval is received from the regional regulatory administrator. Each application should indicate the duration of the proposed retention period and should include the information required by paragraph (b) of this section.

OTHER PROVISIONS RELATING TO THE DISTRIBUTION OF CIGARETTES

§ 296.153 Authority of ATF officers to enter business premises.

Any ATF officer may enter the business premises of any distributor of cigarettes to inspect the records required by §§ 296.146-296.147 or to inspect any cigarettes stored on the premises—

(a) Pursuant to duly issued search warrant or an administrative inspection warrant; or

(b) Upon the consent of the distributor to enter his premises.

PENALTIES AND FORFEITURES

§ 296.154 Penalties.

(a) Any person who knowingly ships, transports, receives, possesses, sells, distributes, or purchases contraband cigarettes shall be fined not more than $100,000 or imprisoned not more than five years, or both.

(b) Any person who knowingly violates any regulation contained in this subpart or makes any false statement or misrepresentation with respect to the information required to be recorded by this subpart shall be fined not more than $5,000 or imprisoned not more than three years, or both.

§ 296.155 Forfeitures.

(a) Any contraband cigarettes involved in any violation of the provisions of 18 U.S.C. Chapter 114 shall be subject to seizure and forfeiture. All provisions of the Internal Revenue Code of 1954 (Title 26 U.S.C.) relating to the seizure, forfeiture, and disposition of firearms, as defined in § 5845(a) of that Code, shall, so far as applicable, extend to seizures and forfeitures of contraband cigarettes under the provisions of 18 U.S.C. Chapter 114.

(b) Any vessel, vehicle or aircraft used to transport, carry, convey, or conceal or possess any contraband cigarettes with respect to which there has been committed any violation of any provision of 18 U.S.C. Chapter 114 or the regulations in this subpart shall be subject to seizure and forfeiture under the Customs laws, as provided by the Act of August 9, 1939 (49 U.S.C. 781-788).

(18 U.S.C. 2344; 53 Stat. 1291 (49 U.S.C. 782))

Signed: May 23, 1980.

STEPHEN E. HIGGINS,
Acting Director.

Approved: July 10, 1980.

RICHARD J. DAVIS,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on July 18, 1980, 8:45 a.m., and published in the Federal Register for July 21, 1980, 45 F.R. 48609)

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Bureau Rulings PART II

Subpart A—Alcohol

27 CFR 194.124: STAMPS FOR PASSENGER TRAINS, AIRCRAFT, AND VESSELS.

(Also 201.386, 240.670, 245.170, 252.92, 252.122, 252.142)

Conditions are set forth under which there is no liability for excise tax or for special tax as a retail dealer in liquors where liquors are served to passengers on aircraft engaged in international air service. ATF Ruling 76-12 is superseded.

ATF Rul. 80-13

The Bureau of Alcohol, Tobacco and Firearms has reexamined its position as set forth in ATF Ruling 76-12, 1976 ATF C.B. 83 regarding the liability under 26 U.S.C. Chapter 51 of an airline operator for excise (gallonage) tax or for special (occupational) tax as a retail dealer in liquors, as a result of serving liquor to passengers during those portions of international flights which are flown across the United States, including such portions of international flights where interim landings are made in the United States.

ATF Ruling 76-12 held that under 26 U.S.C. 5214 and 19 U.S.C. 1309 tax-free liquor could be used during domestic portions of international flights provided no passengers were permitted to board or depart the aircraft during interim stops. However, tax-free liquor could not be used on a domestic portion of an international flight if it involved any point-to-point domestic passenger service. The ruling also held that special tax as a retail dealer was not incurred where the aircraft was eligible to sell tax-free liquor even if the liquor was being sold within the United States.

It has come to the Bureau's attention that under 19 U.S.C. 1309 the Customs Service has permitted the use of duty-free supplies for regularly scheduled international flights even when part of the route includes point-to-point domestic service. Consequently, the Bureau has reexamined its position with regard to tax-free liquors and special tax.

The provisions of this ruling are directed to aircraft engaged in international air service that use airspace over which the United States exercises sovereignty whether registered in the United States or in a foreign country. The liquors (including wine and beer) served to passengers within, or in flight over, United States territorial boundaries are those that have been withdrawn without payment of tax (including liquors withdrawn from bonded storage where such liquors are stored and removed in bond without payment of customs duty) or with benefit of drawback for lading on aircraft engaged in foreign trade or trade between the United States and any of its possessions. For the purpose of this ruling, all such liquor is included in the term "tax-free liquor."

Title 26 U.S.C. 5122 defines a retail dealer in liquors as a person who sells, or offers for sale, any distilled spirits, wines, or beer to any person other than a dealer. 26 U.S.C. 5143 and 27 CFR 194.51 provide that a special tax must be paid at each place where distilled spirits, wines, or beer are sold or offered for sale. 27 CFR 194.22 provides that whether a person is engaged in a business of "selling or offering for sale" is determined by the facts in each case, but any course of selling or offering for sale, though to a restricted class of persons or without a view to profit, is within the meaning of the statute.

Section 309 of the Tariff Act of 1930, 19 U.S.C. 1309, permits distilled spirits, wines, and beer of foreign or domestic origin to be withdrawn free of duty and internal revenue tax or with benefit of drawback (tax-free liquor), for supplies of aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions. Corresponding provisions are contained in 26 U.S.C. 5214(a)(7), 5362(c)(3) and 5053(f).

Article 24(a) of the Convention on International Civil Aviation (commonly known as the Chicago Convention) 61 Stat. 1180 (1947), exempts aircraft stores "on board an aircraft of a contracting State on arrival in the territory of another contracting State and retained on board on leaving the territory of that State" from customs duty, inspection fees "or similar national or local duties and charges." Air Transport Agreements between the United States and other contracting States state essentially that food stores issued for immediate consumption aboard aircraft carrying passengers on "international air service exclusively" that are on board a foreign aircraft on arrival in the United States and retained on board on leaving the territory of the United States shall be exempt, on a basis of reciprocity, from customs duties, inspection fees and other national duties and charges.

Item (1) of Customs Treasury Decision 66-99 (T.D. 66-99), 101 Treas. Dec. 298 (1966), interprets section 309(a)(1)(C) of the Tariff Act of 1930 to establish the types of flights on which duty-free supplies may be used. Under T.D. 66-99, aircraft on regularly scheduled flights to or from a foreign country are entitled to use duty-free jet fuel and other supplies (including liquors) for that part of the route which includes point-to-point domestic service.

Held, flights on which liquor may be used free of duty under Customs T.D. 66-99, are also eligible to use tax-free liquor *i.e.,* liquor which has been laden without payment of, or with benefit of drawback of, the excise (gallonage) tax imposed by 26 U.S.C. Chapter 51. There is, however, no corresponding exemption from special tax liability as a retail dealer for domestic aircraft selling liquor to passengers. Therefore, special tax liability is incurred by operators of aircraft registered in the United States if liquors (tax paid or tax-free) are sold or offered for sale to passengers within, or in flight over, airspace over which the United States exercises sovereignty. However, the serving of alcoholic beverages in connection with complimentary meals, or offering them free to passengers without the meal, shall not be considered engaging in or carrying on the business or occupation of selling or offering for sale alcoholic beverages if the airline's tariffs, as filed with the Civil Aeronautics Board, do not include the price of the meals or the alcoholic beverages but remain the same regardless of whether the passenger accepts them and regardless of whether they are offered such meals or whether the alcoholic beverages are

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only offered to passengers at meal time.

Held Further, aircraft registered with a foreign country may, in accordance with the Chicago Convention and other Air Transport Agreements between the United States and foreign countries, sell alcoholic beverages for immediate consumption aboard aircraft exclusively on international air service without incurring special tax as a retail dealer or excise tax on the liquors.

Under the authority contained in 26 U.S.C. 7805(b), this ruling will not be applied to special tax liability incurred by the sale of tax-free liquors prior to January 1, 1981.

ATF Ruling 76-12, 1976 ATF C.B. 83 is superseded.

27 CFR 201.386: AUTHORIZED WITHDRAWALS WITHOUT PAYMENT OF TAX

Excise tax liability is not incurred by serving distilled spirits on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 231.82: BOTTLING AND LABELING OPERATIONS

Clarification of fill requirements for the bottling of wine and definition of the term "lot of wine bottled" as it applies to the filling of wine. See ATF Rul. 80-14, below.

27 CFR 240.578: CONTENTS OF PACKAGES AND BOTTLES

(Also 27 CFR 231.82)

Clarification of fill requirements for the bottling of wine and definition of the term "lot of wine bottled" as it applies to the filling of wine.

ATF Rul. 80-14

The Bureau of Alcohol, Tobacco and Firearms issues this ruling to clarify the fill requirements prescribed for domestically bottled wine in 27 CFR 240.578 and 231.82 and also to define the term "lot of wine bottled" as it applies to the filling of wine in these regulatory sections.

27 CFR 240.578, concerning wine bottled in a bonded winery or bonded wine cellar, states, in pertinent part, that:

> Bottles must be filled as nearly as possible to conform to the amount shown on the label or blown in the bottle to be contained therein, but in no event may the amount of wine contained in any bottle, due to lack of uniformity of the bottle, vary more than two percent from the amount stated to be contained therein; and further in such case there shall be substantially as many bottles overfilled as there are bottles underfilled for each lot of wine bottled.

27 CFR 231.82 provides substantially the same requirements for wine bottled in a taxpaid wine bottling house.

The regulations state very clearly that bottles must be filled as nearly as possible to conform to the net contents shown on the label or blown into the bottle. The Bureau realizes that a 100 percent fill is impossible to maintain for each bottle of wine filled. However, we expect proprietors to aim for an average fill of 100 percent in each lot of wine bottled. If in the course of conducting a fill test, a proprietor discovers that the fill is below 100 percent, e.g., 99 percent, he should adjust the fill to 100 percent, not to 101 percent. Conversely, if he were to discover that the fill exceeds 100 percent, e.g., 101 percent, he should adjust the fill to 100 percent, not to 99 percent. Adherence to this procedure should result in an average fill of 100 percent and substantially as many bottles being overfilled as there are underfilled for each lot of wine bottled.

The two percent tolerance prescribed in both of these regulations is obviously being misinterpreted by some bottlers as "full" for bottling purposes. The two percent tolerance is not an authorization for proprietors to continuously fill containers of wine at 98 percent of stated capacity. We expect proprietors to aim for an average fill of 100 percent in each lot of wine bottled.

Finally, there has been some confusion with regard to the meaning of the term "lot of wine bottled". This is a technical term which requires a reasonable definition in order to promote uniformity of filling practices among wine bottlers.

Held, the Bureau of Alcohol, Tobacco and Firearms considers the term "lot of wine bottled" to mean (1) wine of the same type, (2) bottled on the same bottling date, (3) into bottles or consumer units of the same measure, and (4) on the same bottling line.

27 CFR 240.670: GENERAL

Excise tax liability is not incurred by serving wine on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 245.170: GENERAL

Excise tax liability is not incurred by serving beer on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 252.92: APPLICATION FORM 206

Excise tax liability is not incurred by serving distilled spirits on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 252.122: APPLICATION FORM 206

Excise tax liability is not incurred by serving wine on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

27 CFR 252.142: APPLICATION FORM 206

Excise tax liability is not incurred by serving beer on aircraft engaged in international air service. See ATF Rul. 80-13, page 17.

Subpart C—FIREARMS

27 CFR 178.11: MEANING OF TERMS

Certain firearms classified as curios or relics. See ATF Rul. 80-15, page 21.

27 CFR 178.11: MEANING OF TERMS

Certain ammunition classified as curios or relics. See ATF Rul. 80-16, page 22.

27 CFR 178.11: MEANING OF TERMS

Certain NFA firearms removed from the Act and classified as curios or relics. See ATF Rul. 80-17, page 22.

27 CFR 178.11: MEANING OF TERMS

Certain NFA weapons prized by licensed collectors classified as curios or relics. See ATF Rul. 80-18, page 24.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

Certain NFA firearms removed from the Act and classified as curios or relics. See ATF Rul. 80-17, page 22.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

Certain NFA weapons prized by licensed collectors classified as curios or relics. See ATF Rul. 80-18, page 24.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

(Also 178.11)

Certain firearms are classified as curios or relics. ATF Ruling 80-9 supplemented.

ATF Rul. 80-15

The Bureau has been asked to determine whether certain firearms, prized by licensed collectors for their limited availability and their distinctive markings denoting specific historical backgrounds, may be classified as curios or relics.

With respect to firearms, 27 CFR 178.11 defines a curio or relic as a firearm having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons.

The Bureau has determined that the following firearms are curios or relics as defined in 27 CFR 178.11 because they fall within one of the categories specified in the regulations.

Such determination merely classifies the firearms as curios or relics and thereby authorizes licensed collectors to acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and the regulations in 27 CFR Part 178. They are still "firearms" as defined in 18 U.S.C. 921(a)(3).

Colt Army Model double action revolver, any caliber, manufactured between 1899 and 1907.

Colt Lightning Model double action revolver, any caliber manufactured between 1899 and 1909.

Colt Model 1908, .25 ACP caliber, hammerless semiautomatic pistol having a grip safety, originally manufactured in Connecticut by Colt prior to 1956.

Colt, Ned Buntline Commemorative, caliber .45, revolver.

Colt Single Action Army revolver, caliber .45, serial #85163A, Engraved and inlaid with a bust of President Abraham Lincoln.

Ithaca double barrel shotguns actually manufactured in New York by the Ithaca Gun Company, Ithaca, New York. All gauges and all models, having barrels at least 18 inches in length and an overall length of at least 26 inches, manufactured before 1950.

Ithaca Gun Company single barrel trap guns, break open all gauges, all models actually manufactured at Ithaca, New York, before 1950.

Mauser, semiautomatic pistols manufactured prior to 1946, any caliber.

Remington 150th Anniversary Model 1100SA semiautomatic shotgun, caliber 12 gauge.

Remington 150th Anniversary Model 870SA slide action shotgun, caliber 12 gauge.

Remington 150th Anniversary Model 742ADL semiautomatic rifle, caliber .30/06.

Remington 150th Anniversary Model 760ADL slide action rifle, caliber .30/06.

Remington 150th Anniversary Model 552A semiautomatic rifle, caliber .22lr.

Remington 150th Anniversary Model 572A slide action rifle, caliber .22lr.

Remington 150th Anniversary Model Nylon 66 semiautomatic rifle, caliber .22lr.

Smith and Wesson, U.S. Border Patrol 50th Anniversary Commemorative, Model 66, stainless steel, caliber .357 Magnum, revolvers.

Smith and Wesson, Model 10 Victory Models, identified by the letter "V" prefix to the serial number, in the original .38 Special chambering, with U.S. Navy acceptance marks.

Winchester rifles, Model 70, .308, .270 Winchester, and 30-06 caliber, 19 inch barrel and Mannlicher type stock, made from 1968 to 1971.

ATF Ruling 80-9, ATFB 1980-2, 20 is supplemented.

27 CFR 178.26: CURIO AND RELIC DETERMINATION

(Also 178.11)

Certain ammunition is classified as curios or relics. ATF Rul. 80-10 supplemented.

ATF Rul. 80-16

The Bureau has been asked to determine whether certain ammunition may be classified as curios or relics.

With respect to ammunition, 27 CFR 178.11 defines curios or relics as ammunition having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with ammunition intended for sporting use or in offensive or defensive weapons. The Bureau has determined that the following types of ammunition are curios or relics as defined in 27 CFR 178.11 because they fall within one of the categories specified in the regulations.

8x56Rmm Portuguese Kropachek, manufactured in Austria, for the Government of Portugal.

8x52Rmm Siamese Mauser, manufactured in Japan, for the Government of Siam.

The above determination merely classifies the ammunition as curios or relics and thereby authorizes licensed collectors to acquire, hold, or dispose of them as curios or relics, subject to the provisions of 18 U.S.C. Chapter 44 and the regulations in 27 CFR Part 178. They are still "ammunition" as defined in 18 U.S.C. 921(a)(17).

ATF Ruling 80-10, ATFB 1980-2, 32 is supplemented.

27 CFR 179.11: MEANING OF TERMS

(Also 178.11, 178.26)

Certain NFA firearms removed from the Act and determined to be collectors items classified as curios or relics. ATF Ruling 80-11 supplemented.

ATF Rul. 80-17

The Bureau has been asked to determine whether certain firearms classified as "firearms" under the National Firearms Act (26 U.S.C. Chapter 53) may be removed from that classification because they are collectors items and not likely to be used as weapons, and whether such firearms may also be classified as curios or relics under the provisions of 18 U.S.C. Chapter 44.

The National Firearms Act, in definitions given in 26 U.S.C. 5845 and 27 CFR 179.11, provides that the term firearm shall not include any device (other than a machinegun or destructive device) which, although designed as a weapon, the Director finds by reason of the date of its manufacture, value, design and other characteristics is primarily a collector's item and is not likely to be used as a weapon. Further, under 27 U.S.C. implementing 18 U.S.C. Chapter 44, to be recognized as a curio or relic a firearm must fall within one of three categories.

The Bureau has determined that by reason of the date of their manufacture, value, design and other characteristics, the following firearms are primarily collectors items and are not likely to be used as weapons and, therefore, are excluded from the provisions of the National Firearms Act.

Further, the Bureau has determined that such firearms are also curios or relics as defined in 27 CFR 178.11.

Thus, licensed collectors may acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and 27 CFR Part 178. They are still "firearms" as defined in 18 U.S.C. 921(a)(3).

PLEASE NOTE:

It is requested that persons having any of these exempted firearms registered with the Bureau of Alcohol, Tobacco and Firearms notify our NFA Branch at the following address so that the National Firearms Registration and Transfer Record can be annotated to show that the particular firearms no longer require registration.

NFA Branch
Bureau of Alcohol, Tobacco and Firearms
1200 Pennsylvania Avenue
Washington, DC 20226

Chinese manufactured copies of the Mauser Model 1896 semi-automatic pistol, produced prior to 1945, any caliber, accompanied by original Chinese manufactured detachable wooden holster/shoulder stocks.

Colt cutaway demonstrator lightning rifle, and all other original cutaway demonstrator lightning rifles produced by Colt.

Colt Single Action Army revolver, serial number 354096, caliber .44/40 having a smooth bored barrel and a barrel length of 7½ inches.

German Schiesshecher Grenade Launcher (G.Gr.Ger.), 27 mm, accompanied by a German Military Mauser 98 type rifle.

High Standard Model C/S smoothbore .22 caliber shot semi-automatic pistols, bearing serial numbers 59279, 59473, 59478, 59460, or 59469.

High Standard Model S smoothbore .22 caliber shot semi-automatic pistols having slides marked: "HI-STANDARD MODEL "S" .22 L.R. SHOT ONLY," and bearing serial numbers 48142, 48143, 48144, 48145, 48146, 59474, 59496, 59458, or 59459.

Krupp Models 1902 and 1906 50mm Mountain Cannons as produced for the Siamese Government.

Marlin Model 1894 carbine, serial number 325609, .32/20, with original 15 inch barrel.

British PIAT (Projector, Infantry, Anti-tank).

Spanish manufactured copies of the Mauser Model 1896 semi-automatic pistol produced prior to 1946 in caliber 7.63mm or 9mm and having either integral or detachable magazines. Accompanied by original Spanish manufactured detachable wooden holster/shoulder stock.

Winchester, Model 36 shotgun, 9mm rimfire.

Winchester, Model 1873, carbine, serial number 127884 and 380061, caliber .44 W.C.F. with original 15-inch barrel.

Winchester, Model 1873, carbine, serial number 695081B, 32 W.C.F. caliber, with a barrel length of 14 inches.

Winchester, Model 1892 carbine, serial number 288562 and 848873, caliber .38-40, with original 14 inch barrel.

Winchester, Model 1894 carbine, serial number 662192 and 883055, caliber .30 WCF, with 15 inch barrel.

Winchester, Model 1892, carbine, serial number 158145, 659700 or 988160, caliber .44 WCF, with 15 inch barrel.

The following firearm was removed from the National Firearms Act as a collector's item and classified as a curio or relic under 18 U.S.C. Chapter 44. However, since it is an antique as defined in Chapter 44, it should not be classified as a curio or relic. Since it is no longer an NFA weapon and is an antique under Chapter 44, it is not subject to GCA provisions.

Winchester, Model 1885, carbine, serial number 83304, caliber .44 W.C.F., with original 15 inch barrel.

ATF Ruling 80-11, ATFB 1980-2, 35 is supplemented.

27 CFR 179.11: MEANING OF TERMS

(Also 178.11, 178.26)

Certain NFA weapons prized by licensed collectors because of their limited availability and historical backgrounds are classified as curios or relics. ATF Rul. 80-12 supplemented.

ATF Rul. 80-18

The Bureau has been asked to determine whether certain National Firearms Act weapons, prized by licensed collectors for their limited availability and their distinctive markings denoting specific historical backgrounds, may be classified as curios or relics.

With respect to firearms, 27 CFR 178.11 defines a curio or relic as a firearm having a special interest to licensed collectors by reason of some quality other than those qualities ordinarily associated with firearms intended for sporting use or as offensive or defensive weapons. The Bureau has determined that the following National Firearms Act weapons are curios or relics as defined in 27 CFR 178.11 because they fall within one of the categories specified in the regulations.

These National Firearms Act weapons classified as curios or relics are still subject to all the controls under the National Firearms Act. However, licensed collectors may acquire, hold or dispose of them as curios or relics subject to the provisions of 18 U.S.C. Chapter 44 and 27 CFR Part 178. They are still "firearms" as defined in the National Firearms Act and 18 U.S.C. 921(a)(3).

Astra Model 901 selective fire pistol, caliber 7.63mm (.30 Mauser).

Astra Model 902 selective fire pistol, caliber 7.63mm (.30 Mauser).

Astra Model 903 selective fire pistol, caliber 7.63mm (.30 Mauser).

Astra Model F selective fire pistol, caliber 9mm Bergmann.

Royal selective fire pistol caliber 7.63mm (.30 Mauser), copy of Mauser Model 1896 pistol.

Azul selective fire pistol, caliber 7.63mm (.30 Mauser), copy of Mauser Model 1896 pistol.

British STEN submachineguns, Mk. I, Mk. II, Mk. III, Mk. IV, and Mk. V, caliber 9mm, original British Commonwealth Military issue only.

Crescent Certified Shotgun, .410 gauge, with 12¼ inch barrel and pistol grip.

German assault rifles selective fire, produced during 1941 through 1945, in caliber 7.92mm Kurz (7.92 x 33mm).

German, Erma (EMP), 9 mm. machine pistol, or MPE.

German 15cm Nebelwerfer, 41 (150-mm) Rocket Launcher.

German 8mm MG 81 and MG 81Z Aircraft Machineguns.

German 15/20mm MG 151 Aircraft Machineguns (all variations).

Japanese 12.7 (13)mm Browning HO-103 Machineguns.

Japanese 20mm Browning Aircraft HO-5 Machineguns/Cannons.

Japanese 30mm Browning Aircraft HO-155 Type 1, Machineguns/Cannons.

Japanese 30mm Browning Aircraft HO-155 Type 2, Machineguns/Cannons.

Japanese 37mm Browning Aircraft HO-204 Machineguns/Cannons.

Japanese 40mm Caseless Aircraft Machineguns/Cannons.

Japanese 20mm Oerlikon Model 99, Machineguns/Cannons.

German 30mm MG 108 Aircraft Machineguns/Cannons.

German 13mm Rheinmetal-Borsig Model 131, Aircraft Machineguns (all variations).

Luger, Mauser commercial manufacture, semiautomatic pistol, 75 Jahre, Parabellum-Pistole, Mod. Karabiner, Commemorative, caliber 9-mm, accompanied by a carbine type shoulder stock.

U.S., 3 inch Anti-tank Gun, Model M-5.

U.S. Model M6, 37mm gun, produced prior to 1946.

ATF Ruling 80-12, ATFB 1980-2, 41 is supplemented.

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Bureau Procedures PART III

Subpart A—ALCOHOL

26 CFR 601.301: IMPOSITION OF TAXES, QUALIFICATION REQUIREMENTS, AND REGULATONS

(Also 27 CFR 19.786)

Reporting Distilled Spirits and Denatured Spirits for Fuel Use on Monthly Reports of Operations.

ATF Proc. 80-2

SECTION 1. PURPOSE.

This ATF Procedure is to inform proprietors of distilled spirits plants who process distilled spirits for industrial use or who import distilled spirits for fuel use of new reporting requirements.

SEC. 2. BACKGROUND.

The provisions of the Crude Oil Windfall Profits Tax Act of 1980 (Public Law 96-223) effective July 1, 1980, require that the Bureau obtain additional statistics about distilled spirits and denatured spirits for fuel use. Specifically, the additional statistics needed are receipts of imported alcohol and denatured spirits from custom custody for fuel use and withdrawals of completely denatured alcohol for fuel use.

SEC. 3. REPORTING PROCEDURE.

Proprietors of distilled spirits plants who process distilled spirits for industrial use or who import distilled spirits or denatured spirits for fuel use shall modify their monthly reports of operations as stated below. The definitions of distilled spirits and denatured spirits are the same as defined under Subpart B of 27 CFR Part 19. In other words, the sources (materials) from which spirits are produced do not affect the reporting of spirits or denatured spirits for fuel use.

(1) ATF F 5110.11, Monthly Report of Storage Operations, shall be modified to report by separate entry on line 5 the quantity of imported alcohol for fuel use received from customs custody. This quantity must be excluded from that reported on line 3-Received from customs custody.

(2) ATF F 5110.28, Monthly Report of Processing (Bottling) Operations, shall be modified to report by separate entry on either line 6 or line 7 the quantity of imported alcohol for fuel use received from customs custody. This quantity must be excluded from that reported on line 2-Received.

(3) ATF F 5110.43, Monthly Report of Processing (Denaturing) Operations, shall be modified to report by separate entry on line 4 the quantity of imported denatured spirits for fuel use received from customs custody. This quantity must be excluded from that reported on line 3-Received by transfer in bond. In addition, ATF F 5110.43 must be modified to report by separate entry on line 10, column (b), the quantity of completely denatured alcohol withdrawn for fuel use to dealers, users, and the United States.

This quantity must be excluded from that reported in column (b) of line 6-To dealers and users, or line 7-Removed for use of U.S.

SEC. 4. REVISED MONTHLY REPORT OF OPERATIONS.

These monthly reports of operations are currently being revised. Upon completion of printing, the Bureau will forward copies of these forms to proprietors. Additional copies of the forms may then be ordered from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206. Until receipt of the revised printing of these forms, proprietors shall modify the current editions of the monthly reports of operations in order to reflect data related to spirits and denatured spirits for fuel use.

SEC. 5. EFFECTIVE DATE.

This procedure is effective July 1, 1980. Monthly reports of operations, as listed above, for the month of July 1980 and subsequent months shall include the additional information required by this ATF Procedure.

SEC. 6. INQUIRIES.

Inquiries regarding this ATF Procedure should refer its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

27 CFR 19.786: REPORTS

Reporting Distilled Spirits and Denatured Spirits for Fuel Use on Monthly Reports of Operations. See ATF Proc. 80-2, above.

Announcements PART VI

Announcement 80-42

Major Disaster Areas Preclaimed By The President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
July 24, 1980 (45 F.R. 51654)	WISCONSIN Counties of: Chippewa, Dunn, Eau Claire, and Pierce	Severe storms and flooding beginning on or about July 15, 1980
August 11, 1980 (45 F.R. 55815)	TEXAS Counties of: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, and Willacy	Damage resulting from Hurricane Allen beginning on or about August 10, 1980
August 15, 1980	WEST VIRGINIA Counties of: Fayette, Hancock, Harrison (1st District), Jackson, Kanawha, Marion, Marshall, Monongalia, Nicholas, Ohio, Preston, Putnam, Raleigh, Taylor, and Webster	Severe storms and flooding beginning on or about August 4, 1980
August 19, 1980	PENNSYLVANIA Counties of: Armstrong, Butler, and Clarion	Severe storms and flooding beginning on or about August 14, 1980
August 23, 1980	OHIO Counties of: Belmont, Columbiana, Guernsey, Jefferson, and Muskingum	Severe storms and flooding beginning on or about August 11, 1980

Announcement 80-43

Amendment of Firearms Statistics (Announcement 80-2)

Because of incorrect data submitted by firearms manufacturer for the last quarter of Fiscal Year 1979, the statistical tabulation of firearms manufactured in the United States needs to be amended. Announcement 80-2 (ATFB 1980-1,25) showed the figures for the period of 1 July through 30 September 1979 as 152,870 for pistols manufactured and 333,433 for revolvers manufactured. The correct figure should read as follows:

Pistols	149,516
Revolvers	334,979

As a result of these changes, the total figures for fiscal year 1979, are also amended. The new total figure for pistols manufactured is 609,564, and the new total for revolvers manufactured is 1,514,645.

We regret any inconvenience which may be caused by these changes; however, we are attempting to provide the most accurate information possible.

Announcement 80-44

Statistical tabulation of firearms manufactured in the United States and firearms exported during the second quarter of Fiscal Year 1980

The following statistics represent the number of firearms manufactured in the United States during the Second Quarter (1 January through 31 March 1980) and the number of these firearms which were subsequently exported. These figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only these weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of firearm produced	*Total production*
Pistols	200,197
Revolvers	440,867
Rifles	521,339
Shotguns and Combination guns	339,110
Machineguns	15,688
Any Other Weapon	11

Type of firearm exported	*Quantity*
Pistols	6,007
Revolvers	46,223
Rifles	44,542
Shotguns and Combination Guns	28,240
Machineguns	15,299
Any Other Weapon	00

Announcement 80-45

List of Explosive Materials

Pursuant to the provisions of Section 841(d) of Title 18, United States Code, and 27 CFR 181.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must publish and revise at least annually in the Federal Register a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This Chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of Title 18, United States Code.

Accordingly, the following is the 1980 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the Federal Register and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is *not* all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in Section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List by Explosive Materials dated August 28, 1979 (44 FR 50422; 51695).

List of Explosive Materials

A

Acetylides of heavy metals.

Aluminum containing polymeric propellant.

Aluminum ophorite explosive.

Amatex.

Amatol.

Ammonal.

Ammonium nitrate explosive mixtures (cap sensitive).

*Ammonium nitrate explosive mixtures (non cap sensitive).

Aromatic nitro-compound explosive mixtures.

Ammonium perchlorate having particle size less than 15 microns.

Ammonium perchlorate composite propellant.

Ammonium picrate [picrate of ammonia, Explosive D].

Ammonium salt lattice with isomorphously substituted inorganic salts.

*ANFO [ammonium nitrate-fuel oil].

B

Baratol.

Baronol.

BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].

Black powder.

Black powder based explosive mixtures.

*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.

Blasting caps.

Blasting gelatin.

Blasting powder.

BTNEC [bis (trinitroethyl) carbonate].

BTNEN [bis (trinitroethyl) nitramine].

BTTN [1,2,4 butanetriol trinitrate].

Butyl tetryl.

C

Calcium nitrate explosive mixture.

Cellulose hexanitrate explosive mixture.

Chlorate explosive mixtures.

Composition A and variations.

Composition B and variations.

Composition C and variations.

Copper acetylide.

Cyanuric triazide.

Cyclothrimethylenetrinitramine [RDX].

Cyclotetramethylenetetranitramine [HMX].

Cyclotol.

D

DATB [diaminotrinitrobenzene].

DDNP [diazodinitrophenol].

DEGDN [diethyleneglycol dinitrate].

Detonating cord.

Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitro form).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.

K

KDNBF [potassium dinitrobenzofuroxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate]

Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (explosive grade).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1, 3a,4,6a-tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethyl orthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Explosives Technology Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226 (202-566-7087).

Announcement 80-46

Supreme Court Decision

Ct. D. 15

SUPREME COURT OF THE
UNITED STATES

Nos. 78-6020
and 78-6029

Michael M. Busic, Petitioner,
78-6020
v.
United States

Anthony LaRocca, Jr., Petitioner,
78-6029
v.
United States

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

May 19, 1980

Syllabus

No. 78-6020. Argued February 27, 1980—Decided May 19, 1980*

Upon their joint trial in Federal District Court, petitioners were convicted of, *inter alia,* armed assault on federal officers—petitioner LaRocca as the actual triggerman and petitioner Busic as an aider and abettor and thus derivatively a principal under 18 U.S.C. §2—in violation of 18 U.S.C. § 111, which makes it unlawful to assault a federal officer and which provides for enhanced punishment when the assaulter "uses" a deadly weapon. In addition, LaRocca was convicted of using, and Busic of carrying, a firearm in the commission of the armed assault, in violation of 18 U.S.C. § 924(c), which authorizes the imposition of enhanced penalties on a defendant who "uses" (§ 924(c)(1)) or "carries" (§ 924(c)(2)) a firearm while committing a federal felony. Each petitioner's sentence included 5 years on possession of firearms and the assault charges, and 20 years for the § 924(c) violations. The Court of Appeals ultimately held that while LaRocca's sentence could not be enhanced under both § 111 and § 924(c)(1) for "using" a firearm, he could be sentenced under either at the Government's election, but that, since the § 924(c) charge against Busic alleged not that he "used" a firearm but rather than he "carried" one, his sentence was valid.

Held: Section 924(c) may not be applied to a defendant who uses a firearm in the course of a felony that is proscribed by a statute which itself authorizes enhancement if a dangerous weapon is used. The sentence received by such a defendant may be enhanced only under the enhancement provision in the statute defining the felony he committed. Pp. 4-13.

(a) This result is supported not only by *Simpson* v. *United States,* 435 U.S. 6, but also by the legislative history of § 924(c) and the canons of statutory construction that ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity, and that a more specific statute (18 U.S.C. § 111 here) will be given precedence over a more general one (§ 924(c)), even if, as here, the general provision was enacted later. To the extent that this construction may lead to irrational sentencing patterns in which some less severe crimes are punished more than other more severe crimes, it is the Congress, not this Court, that must take corrective action. Pp. 4-12.

(b) This holding not only makes it clear that petitioner LaRocca may not be sentenced under § 924(c)(1) for using his gun to assault federal officers, but also applies to petitioner Busic's case. Nor can Busic's sentence be sustained by arguing that a person who *carries* a gun in the commission of a § 111 violation may be sentenced under § 924(c)(2) because the enhancement provision of § 111 does not apply to those who *carry* but do not *use* their weapons. The fact is that Busic is being punished for *using* a weapon. Through the combination of § 111 and 18 U.S.C. § 2, he was found guilty as a principal of using a firearm to assault federal agents. Pp. 12-13.

587 F. 2d 577, reversed and remanded.

BRENNAN, J., delivered the opinion of the Court, in which BURGER, C. J., and WHITE, MARSHALL, BLACKMUN, and POWELL, JJ., joined. BLACKMUN, J., filed a concurring opinion, in which BURGER, C. J., joined. STEWART, J., filed a dissenting opinion, in which STEVENS, J., joined. REHNQUIST, J., filed a dissenting opinion.

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Section 924(c) of Title 18 U.S.C. authorizes the imposition of enhanced penalties on a defendant who uses or carries a firearm while committing a federal felony. The question for decision in these cases is whether that section may be applied to a defendant who uses a firearm in the course of a felony that is proscribed by a statute which itself authorizes enhancement if a dangerous weapon is used. We hold that the sentence received by such a defendant may be enhanced only under the enhancement provision in the statute defining the felony he committed and that § 924(c) does not apply in such a case.

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* Together with No. 78-6029, *LaRocca v. United States,* also on certiorari to the same court.

I

Petitioners Anthony LaRocca, Jr. and Michael Busic were tried together on a multicount indictment charging drug, firearms and assault offenses flowing from a narcotics conspiracy and an attempt to rob an undercover agent. The evidence showed that in May 1976 the two arranged a drug buy with an agent of the Drug Enforcement Administration who was to supply $30,000 in cash. When the agent arrived with the money, LaRocca attempted to rob him at gunpoint. The agent signalled for reinforcements, and as other officers began to close in LaRocca fired several shots at them. No one was hit and the agents succeeded in disarming and arresting LaRocca. Busic was also arrested and the officers seized a gun he was carrying in his belt but had not drawn. Additional weapons were found in the pair's automobile.[1]

A jury in the United States District Court for the Western District of Pennsylvania convicted petitioners of narcotics and possession of firearms counts,[2] and of two counts of armed assault on federal officers in violation of 18 U.S.C. § 111—LaRocca as the actual triggerman and Busic as an aider and abettor, and thus derivatively a principal under 18 U.S.C. § 2. In addition, LaRocca was convicted of using a firearm in the commission of a federal felony in violation of 18 U.S.C. § 924(c)(1), and Busic was convicted of carrying a firearm in the commission of a federal felony in violation of 18 U.S.C. § 924(c)(2).[3] Each petitioner was sentenced to a total of 30 years, of which five resulted from concurrent sentences on the narcotics charges, five were a product of concurrent terms on the firearms and assault charges, and 20 were imposed for the § 924(c) violations.

The defendants appealed, contending, among other things, that they could not be sentenced consecutively for assaulting a federal officer with a dangerous weapon as defined in 18 U.S.C. § 111[4] and for the use of a

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[1] The facts are recited in the opinion of the United States Court of Appeals for the Third Circuit. *United States* v. *Busic,* 587 F. 2d 577, 579-580 (CA3 1978).

[2] The five narcotics counts alleged violations of 21 U.S.C. §§ 841(a)(1), 843(b), and 846. The firearms counts involving both petitioners charged violations of 26 U.S.C. §§ 5861(c), 5861(d), and 5871, and 18 U.S.C. §§ 922(h) and 924(a). LaRocca was named in six of these counts and Busic in five. In addition, Busic was convicted on three counts of unlawful firearms possession in violation of 18 U.S.C. § 1202 (a)(1). The indictment is reproduced at App. 5-15.

[3] The § 924(c) counts on which the two were convicted recited as predicate felonies both the narcotics violations and the assaults on federal officers. In the courts below the Government attempted to support the § 924(c) convictions in part by arguing that whatever their validity when superimposed on the assault charges, they could validly be grounded on the drug counts. The Court of Appeals rejected this contention, concluding that the jury might have found the drug conspiracy to have come to an end before the robbery and assaut. 587 F. 2d, at 584, n. 5, and 589, n. 3. The Government does not press this argument in this Court, and we accordingly treat the case as though the § 924(c) charges recited only the assaults on federal officers as predicate felonies.

[4] 18 U.S.C. § 111 provides as follows:

"Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imfirearm in connection with that crime as provided in § 924(c).[5] In an opinion announced before *Simpson* v. *United States*, 435 U.S. 6 (1978), was decided, the Court of Appeals for the Third Circuit concluded that the imposition in LaRocca's case of enhanced sentences under both § 924(c) and § 111 for a single assault with a firearm violated the Double Jeopardy Clause of the Fifth Amendment because the two statutes required proof of identical elements. *United States* v. *Busic*, 587 F. 2d 577, 583-584 (CA3 1978). Accordingly, LaRocca's case was remanded to the District Court for resentencing under either § 111 or § 924(c), at the Government's election. Since the § 924(c) charge against Busic alleged not that he *used* a firearm (§ 924(c)(1)), but rather that he *carried* one (§ 924(c)(2)), the Court of Appeals held that no like infirmity invalidated his conviction and sentence. In its view, the § 111 and § 924(c) charges against him did not require proof of the same elements and hence did not merge because the former could be established merely by showing that Busic had aided and abetted LaRocca's use of a gun to assault the federal officers, while the latter required proof of the additional fact that Busic had unlawfully carried a gun. 587 F. 2d, at 584.

Following this Court's decision in *Simpson* v. *United States*, *supra*, the Court of Appeals granted a petition for rehearing and vacated its Double Jeopardy holding with regard to LaRocca on grounds there was no reason to reach the constitutional question. 587 F. 2d, at 587-589. Thereafter, it proceeded as a matter of statutory construction to arrive at a nearly identical conclusion—namely that LaRocca's sentence could not be enhanced under both § 111 and § 924(c) but that he could be sentenced under either at the Government's election. The Court of Appeals did not alter its holding with regard to Busic. We granted certiorari, —— U.S. —— (1979), and now reverse the enhanced sentences that were imposed on both petitioners under § 924(c).

II

We turn first to the case of petitioner LaRocca because it poses most directly the key question of legislative intent. Our starting point, like that of the parties, is *Simpson*, *supra*. There we considered the relationship between § 924(c) and the federal bank robbery statute, 18 U.S.C. § 2113, which, like the assault provision at issue here, 18 U.S.C. § 111, predates § 924(c) and provides by its own terms for enhanced punishment where the felony is com-

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prisoned not more than three years, or both.

"Whoever, in the commission of any such acts uses a deadly or dangerous weapon, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Among the persons designated in 18 U.S.C. § 1114 are officers or employees of the Drug Enforcement Administration.

[5] 18 U.S.C. § 924(c) provides:

"Whoever—

"(1) uses a firearm to commit any felony for which he may be prosecuted in a court of the United States, or

"(2) carries a firearm unlawfully during the commission of any felony for which he may be prosecuted in a court of the United States[,]

"shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to a term of imprisonment for not less than two nor more than twenty-five years and, notwithstanding any other provision of law, the court shall not suspend the sentence in the case of a second or subsequent conviction of such person or give him a probationary sentence, nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony."

mitted with a dangerous weapon.[6] Relying upon the legislative history and applicable canons of statutory construction, *Simpson* held that the Congress cannot be understood to have intended that a defendant who has been convicted of robbing a bank with a firearm may be sentenced under both § 924(c) and § 2113(d). The parties to the instant case agree that *Simpson* clearly prohibits the imposition on these petitioners of similarly enhanced sentences under both § 924(c) and § 111. But the Government contends that *Simpson* resolved only the double enhancement question—that the Court's holding and opinion should not be read to find § 924(c) inapplicable where the prosecution proceeds under that provision *rather than* the enhancement provision of a predicate felony statute like § 111. Such a reading, the Government asserts, is supported by the facts presented in *Simpson*,[7] the language used to describe the actual "holding,"[8] the most likely inferences that may be drawn as to what Congress would have wanted had it focused on the precise problem,[9] and the asserted irrationality of some of the consequences that would flow from a holding that § 924(c) is inapplicable in cases like the present one.[10]

We disagree. In our view, *Simpson*'s language and reasoning support one conclusion alone—that prosecution and enhanced sentencing under § 924(c) is simply not permissible where the predicate felony statute contains its own enhancement provision. This result is supported not only by the general principles underlying the doctrine of *stare decisis*—principles particularly apposite in cases of statutory construction—but also by the legislative history and relevant canons of statutory construction. The Government has not persuaded us that this result is irrational or depends upon implausible inferences as to congressional intent. And to the extent that cases can be hypothesized in which this holding may support curious or seemingly unreasonable comparative sentences, it suffices to say that the asserted unreasonableness flows not from *Simpson* and this decision, but rather from the statutes as Congress wrote them. If corrective action is needed, it is the Congress that must provide it. "It is not for us to speculate, much less act, on whether

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[6] For present purposes, §§ 2113 and 111 are fully analogous. Therefore, what *Simpson* held of the relationship between § 924(c) and the one applies to that section's relationship with the other as well.

[7] Petitioners in *Simpson* had been sentenced under both enhancement provisions. 435 U.S., at 9.

[8] *Simpson*'s final paragraph stated in part: "Accordingly, we hold that in a prosecution growing out of a single transaction of bank robbery with firearms, a defendant may not be sentenced under both § 2113(d) and § 924(c)." 435 U.S., at 16.

[9] Section 924(c) was enacted as part of the Gun Control Act of 1968 in the wake of the assassinations of Senator Robert F. Kennedy and Reverend Martin Luther King, Jr. It clearly was an attempt to take major steps to prevent firearm abuses. Thus, it is argued, it is unlikely that Congress would have wanted the severe penalties of § 924(c) to be pre-empted by less stringent penalties provided in pre-existing enhancement provisions.

[10] For example, the Government notes that under such a holding a person who breaks into a Post Office in violation of 18 U.S.C. § 2115, which contains no enhancement provision, could receive an extra 10 years under § 924(c) for using a gun to shoot the lock off. In contrast, the sentence of a person who draws a gun and fires a number of shots while robbing a bank could not be enhanced under that provision because the bank robbery statute's enhancement clause would take precedence. That clause, § 2113(d), permits a sentence of up to 25 years, but even if he had not used a weapon this person could have received 20 years under § 2113(a). Accordingly, the *incremental* penalty the bank robber can receive for using the firearm is only five years as opposed to 10 for the Post Office robber.

Congress would have altered its stance had the specific events of this case been anticipated." *TVA* v. *Hill,* 437 U.S. 153, 185 (1978).

Our reasoning has several strands. It begins, as indeed it must, with the text and legislative history of § 924(c). By its terms, that provision tells us nothing about the way Congress intended to mesh the new enhancement scheme with analogous provisions in pre-existing statutes defining federal crimes. Moreover, as *Simpson* noted, 435 U.S., at 13, and n. 7, § 924(c) was offered as an amendment on the House floor by Representative Poff, 114 Cong. Rec. 22231 (1968), and passed on the same day. *Id.*, at 22248. Accordingly, the committee reports and congressional hearings to which we normally turn for aid in these situations simply do not exist, and we are forced in consequence to search for clues to congressional intent in the sparse pages of floor debate that make up the relevant legislative history. The crucial material for present purposes is the following observation by Representative Poff:

> "For the sake of legislative history, it should be noted that my substitute is not intended to apply to title 18, sections 111, 112, or 113 which already define the penalties for the use of a firearm in assaulting officials, with sections 2113 or 2114 concerning armed robberies of the mail or banks, with section 2231 concerning armed assaults upon process servers or with chapter 44 which defines other firearm felonies." 114 Cong. Rec. 22232.

Simpson pointed out that, "This statement is clearly probative of a legislative judgment that the purpose of § 924(c) is already served whenever the substantive federal offense provides enhanced punishment for use of a dangerous weapon." 435 U.S., at 13. Moreover, Representative Poff's remarks were the only ones touching on the present question that were before the House when § 924(c) was adopted, and it is therefore reasonable to assume that they represent the understanding of the Congressmen who voted for the proposal.[11]

Reliance on Representative Poff's statement of legislative intent is consistent with the position taken by the Department of Justice in 1971 when it advised prosecutors not to proceed under § 924(c)(1) if the predicate felony statute provided for "increased penalties where a firearm is used in the commission of the offense." *Simpson, supra,* at 16, quoting 19 U.S. Attys. Bull. No. 3, 63 (U.S. Dept. of Justice, 1971). Moreover, this view is fully consistent with two tools of statutory construction relied upon in *Simpson.* The first is the oft-cited rule that " 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.' " *United States* v. *Bass,* 404 U.S. 336, 347 (1971), quoting *Rewis* v. *United States,* 401 U.S. 808, 812 (1971). And the second is the principle that a more specific statute will be given precedence over a more general one, regardless of their temporal squence. *Priser* v. *Rodriguez,* 411 U.S. 475, 489-490 (1973). In *Simpson,* these principles counselled against double enhancement. They served as "an outgrowth of our reluctance to increase or multiply punishments absent a clear and definite legislative directive." 435 U.S., at 15-16. Here they play a similar role, and thus help confirm the conclusion that § 924 (c) may not be applied at all in the present situation.

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[11] This interpretation receives additional support from the fact that the Conference Committee chose the Poff version over a Senate proposal which, according to its sponsor, 114 Cong. Rec. 27142 (1968), would have permitted enhancement for the use of a firearm even where the predicate offense contained its own enhancement clause. H.R. Conf. Rep. No. 1956, 90th Cong., 2d Sess., 31-32 (1968). We recognize, as the Government points out, that the Senate version differed in other respects as well; but insofar as it points in any direction this chain of events supports reliance on the Poff statement.

The Government seeks to minimize the force of these principles of statutory construction by urging (1) that there is no ambiguity in § 924(c) and thus that the rule of lenity is not properly called into play and (2) that in fact it is § 924(c) that is the more specific statute because it relates only to firearms while § 111 would permit enhancement for any dangerous weapon. We find each contention flawed. As to the first, the claim that there exists no ambiguity does not stand up. Plainly the text of the statute fails to address the issue pertinent to decision of this case—whether Congress intended (1) to provide for enhanced penalties only for crimes not containing their own enhancement provisions, (2) to provide an alternative enhancement provision applicable to all felonies or (3) to provide a duplicative enhancement provision which would permit double enhancement where the underlying felony was proscribed by a statute like § 111. Our task here, as in *Simpson,* is to ascertain as best we can which approach Congress had in mind. The rule of lenity, like reference to appropriate legislative materials, is one of the tools we use to do so.

The Government's second contention—that § 924(c) rather than § 111 should be viewed as the more specific statute—is both facially unpersuasive [12] and likely to lead to curious consequences. Indeed, were the Government correct we would be forced to conclude that with regard to firearms cases § 924(c) impliedly repealed *all* pre-existing enhancement provisions. Yet there is not a shred of evidence to suggest that this is what Congress intended. Moreover, such a result would be inconsistent with *Simpson* [13] and in any event would not give the Government what it wants because it would not permit the prosecutor to choose between § 924(c) and § 111.

In addition to contesting the rule of lenity and specific-versus-general arguments, the Government contends that our reading of the legislative materials is unreasonable because those who supported the Poff amendment—including Representative Poff himself—were clearly committed to meting out stiff penalties for use of a firearm in the course of a felony and would not have followed any course inconsistent with that commitment. The argument is overdrawn. In the first place, we do not think our construction is inconsistent with a congressional desire to deal severely with firearm abuses. As we understand it, the Government's argument is not that our construction reads Congress to have *diminished* the penalty for firearm use, but only that our construction fails to enhance that penalty to the hilt. Yet it is patently clear that Congress too has failed to enhance that penalty to the hilt—it set maximum sentences as well as a variety of other limits on the available punishment. Thus, while Congress had a general desire to deter firearm abuses, that desire was not unbounded. Our task here is to locate one of the boundaries, and the inquiry is not advanced by the assertion that Congress wanted no boundaries.

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[12] Indeed, § 924(c) is itself fairly broad. It refers to "firearms," a term defined in 18 U.S.C. §§ 921(a)(3) and (4) to include bombs, grenades, rockets, mines and similar devices in addition to guns.

[13] The disposition in *Simpson* was to remand for proceedings consistent with the opinion of the Court. On remand, the Court of Appeals vacated the § 924(c) sentences and approved and affirmed those under § 2113(d)—a disposition that would have been improper were the Government correct in its specificity argument.

More specifically, *some* accommodation between § 924(c) and statutes like § 111 is obviously necessary. And since some pre-existing statutes provided for sentences less severe than § 924(c) and others for penalties more severe,[14] any rule of priority would lead in certain circumstances to a punishment less severe than might have been achieved under another rule of priority. The Government in effect argues that had Representative Poff and his colleagues foreseen this problem they would have eschewed any priority rule and instead rested complete discretion in the prosecutor. We do not dispute that a rule permitting prosecutors freedom of choice might give greater effect to a legislative desire to increase the penalties for firearm use, but the same could be said of any number of constructions of the statute, including the one rejected in *Simpson*. Indeed, by rejecting double enhancement *Simpson* exposes the stark and unidimensional quality of any calculus which attempts to construe the statute on the basis of an assumption that in enacting § 924(c) Congress' sole objective was to increase the penalties for firearm use to the maximum extent possible.

The fact that the enhanced sentences authorized in some predicate felony statutes are greater than those set forth in § 924(c) while those in others are less provides a partial response to the Government's contention that our construction would lead to irrational sentencing patterns in which some less severe crimes are punished more than other more severe ones.[15] The fact is that any interpretation might have led to differences in treatment that are not intuitively reasonable. In consequence, the presence of differences here fails to shake our confidence in our construction. More broadly, it is simply not for this Court to substitute its accommodation between old and new enhancement provisions for the one apparently chosen by Congress. On the contrary "in our constitutional system the commitment to the separation of powers is too fundamental for us to pre-empt congressional action by judicially decreeing what accords with 'common sense and the public weal.'" *TVA* v. *Hill,* 437 U.S. 153, 195 (1978).

III

What we have said thus far disposes of LaRocca's case by making it clear that he may not be sentenced under § 924(c) for using his gun to assault the federal officers. This holding also applies in Busic's case. But in that case the Government has a fallback position. Even if a person who *uses* a gun to violate § 111 may not be sentenced for doing so under § 924(c)(1), the argument goes, a person who *carries* a gun in the commission of a § 111 violation may be sentenced under § 924(c)(2) because the enhancement provision of § 111 does not apply to those who *carry* but do not *use* their weapons. Thus, the Government urges, whatever our holding with regard to LaRocca, Busic may be sentenecd under § 924(c)(2) for carrying his gun while committing the crime of aiding and abetting LaRocca's violation of § 111.

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[14] Section 924(c) provides for maximum incremental penalties for use of a firearm of 10 years for a first offender and 25 years for a second offender. Under § 2113, the incremental penalty available for use of a dangerous weapon in the course of an otherwise forceful bank robbery is five years (25 years under § 2113(d) less 20 years under § 2113(a)), while the incremental penalty for using a weapon in the course of an otherwise nonviolent robbery is 15 years (25 years less 10 years under § 2113(b)) if the goods taken are worth more than $100 and 24 years (25 years less one year) if the goods taken are worth less. And under 18 U.S.C. § 2114, another statute referred to by Representative Poff, the incremental cost to the defendant of using a gun to assault a person having custody of the mail or property of the United States is 15 years. Thus, a ruling making § 924(c) preemptive would increase some incremental penalties while actually decreasing others. In contrast, the Poff rule merely leaves these penalties where they were set by Congress in the first place—it makes no existing firearm penalty smaller or larger.

[15] One of the Government's examples is described in n. 10, *supra.* The unlikeliness of the hypothetical and the fact that it compares only incremental and not total penalties suggest that the possibility of genuinely troubling comparative sentences may be exaggerated.

The central flaw in this argument as applied here is that Busic *is* being punished for using a weapon. Through the combination of § 111 and 18 U.S.C. § 2, he was found guilty as a principal of using a firearm to assault the undercover agents.[16] LaRocca's gun, in other words, became Busic's as a matter of law. And the Government's argument thus amounts to the contention that had Busic shot one gun at the officers and carried another in his belt he could have been punished under § 111 for the one he fired and under § 924(c)(2) for the one he didn't fire. Similarly, this argument would suggest, Busic might be punished for carrying a gun in his belt and also for shooting that same gun. Yet such results are wholly implausible. They would stand both *Simpson* and our holding in Part II, *supra*, on their heads, impute to Congress the unlikely intention to punish each weapon as a separate offense, and create a situation in which aiders and abettors would often be more culpable and more severely punished than those whom they aid and abet.[17] We decline to read the statutes to produce such an ungainly result. It seems to us that our holding of Part II is equally applicable here—Busic's vicarious assault and use of a dangerous weapon are subject to prosecution and punishment under § 111 and he has been duly prosecuted and punished pursuant to that provision. In such a case, *Simpson*, the legislative history, and applicable canons of statutory construction make it clear that neither subsection of § 924(c) is available.[18]

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[16] 18 U.S.C. § 2 provides in relevant part that "[w]hoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

[17] On these facts, for example, the Government's view would permit Busic—the aider and abettor—to be sentenced under *both* § 924(c) and § 111—while LaRocca—the triggerman—could be sentenced only under the latter. That this is so is a product not of our holding in Part II, but of the Government's theory itself. This is quite clear if one assumes for purposes of argument that LaRocca could have been punished under § 924(c)(1) for using his gun. Were that the case, Busic, too would have been guilty of that crime as an aider and abettor. And the Government's argument here would lead to the conclusion that he could also be guilty of violating § 924(c)(2) by carrying his own gun. In short, while he neither shot nor drew his gun, he would have been subject to fully twice the penalties that would have faced his more culpable comrade.

[18] Our result with regard to Busic flows as much from the logic and language of 18 U.S.C. § 2 as from anything peculiar to § 924(c). Second 2 makes Busic punishable "as a principal," and those words mean what they say. One consequence is that aiders and abettors may be held vicariously liable "regardless of the fact that they may be incapable of committing the specific violation which they are charged to have aided and abetted." S. Rep. No. 1020, 82d Cong., Sess. (1951). Another is that there will inevitably exist cases in which a decision to treat an aider and abettor as a principal may be inconsistent with prosecuting and

These cases are reversed and remanded to the Court of Appeals for proceedings consistent with this opinion.[19]

So ordered.

Announcement 80-47

ATF Regulatory Policy

The Director of the Bureau of Alcohol, Tobacco and Firearms has decided to provide employees, members of the regulated industry, and the public alike with a written statement of the Bureau's regulatory policy. He feels that it is important to publish a written statement because it facilitates communication and provides a written standard against which every significant action can be measured.

The following regulatory policy presents the major concepts and beliefs which help determine the type of regulator this Bureau is now and will attempt to be in the future.

ATF REGULATORY POLICY

1) ATF's major regulatory emphasis is to achieve voluntary compliance with the law and regulations, recognizing that compliance with the intent of the law and regulations is equally as important as compliance with the letter of the regulations. Failure to comply with a regulatory requirement must be viewed in terms of results and/or impact of non-compliance in that specific situation.

2) When non-compliance does occur, and discrepancies, irregularities, or violations are disclosed, ATF's actions must be prompt, objective, consistent, fair, and commensurate with the seriousness of the situation.

3) The industries ATF regulates must be considered as legitimate businesses, and therefore entitled to the same consideration, treatment, and protection as is any other business.

4) In interactions involving the regulated industry, ATF representatives must maintain a totally professional posture. We must be responsive to the problems and concerns of the public and the regulated industry. In dealing with the industry (or any special interest group) at any level in the organization, we must ensure total objectivity; every action must be based upon rational analysis of factual information, and must be subject to, and able to withstand close public scrutiny.

5) ATF has the responsibility and obligation to help industry mem-

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punishing his as well for some of his individual acts of aiding and abetting. Phrased differently, once he has been treated as a principal some of his lesser acts in furtherance of the central violation may merge into it. On these facts, § 2 appears to require that we treat Busic as though he used LaRocca's gun to commit this assault. It would be incongruous to treat him at the same time as a separate individual punishable as though he had carried a different gun in the course of a different crime.

[19] The Government makes a conditional plea that should we find § 924(c) to be inapplicable to these petitioners we vacate not only the § 924(c) sentences, but also those imposed by the District Court under § 111. This, the Government urges, would permit that court to resentence petitioners under the enhancement provision of the latter statute. The argument is that the District Court intended to deal severely with the assaults in question and should not be prevented from doing so by its choice of the incorrect enhancement provision. The Court of Appeals has not considered this contention in this context and we are reluctant to do so without the benefit of that court's views. Accordingly, we express no opinion as to whether in the particular circumstances of this case such a disposition would be permissible.

bers understand the laws and regulations administered by ATF. We believe that a higher level of voluntary compliance can be achieved if industry members clearly understand the law and regulations.

6) One of ATF's primary responsibilities in the regulatory area is that of protecting the interests of the consumer. Regulations should reflect the needs and wishes of the consumer, and to this end consumer participation in the rulemaking process should be encouraged and solicited.

Consumer complaints and concerns with respect to the conduct of the regulated industries, or of ATF employees, must be handled promptly and efficiently. The public must be informed of quick, effective ways to exchange information with ATF.

7) ATF is responsible for assuring that the excise tax is properly paid, and that the tax administration program is efficient and cost effective.

8) Regulations issued must be consistent with the intent of the legislation and must not go beyond that intent. We must guard against over-regulation of any of the industries under ATF's jurisdiction, or indiscriminately enforcing a regulation regardless of the circumstances.

9) Regulations must be written in a clear and concise manner, and be easily understandable. The need for the regulation must be established before the regulation is written.

10) Any activity, process, or procedure that is not specifically prohibited by law or regulation should be initially viewed as being permissible or acceptable.

11) Those regulated and/or affected by the regulations must have an opportunity for full participation in developing the regulations. The rulemaking process will be structured so that participation is not only encouraged, but actually occurs, and that the participation is not only seriously considered, but is an important element in the developmental process.

12) Our interactions with other Federal, State and local agencies (regardless of their mission) should be one of total assistance and cooperation, working toward the common goals of providing a necessary, cost effective service to the American public.

G. R. Dickerson,
Director

Announcement 80-48

Robert J. Maxwell Appointed to New Regulatory Post

Robert J. Maxwell, 39, has been named Deputy Assistant Director of Regulatory Enforcement for the Bureau of Alcohol, Tobacco and Firearms. Maxwell, who had been Chief of the Trade and Consumer Affairs Division, Regulatory Enforcement, succeeds William T. Drake, who was promoted to the position of Assistant Director for Regulatory Enforcement.

In his new position, Maxwell will play a leading role in overseeing the regulation of the alcohol, tobacco, firearms and explosives industries; and in the overall management of the Bureau's Regulatory Enforcement office. ATF ensures the yearly collection of more than $8 billion in alcohol and tobacco excise taxes.

During his service as Chief of Trade and Consumer Affairs, Maxwell was responsible for the division that monitors industry practices of alcoholic beverage producers and distributors. He was also responsible for overseeing the Bureau's campaign to revise the guidelines for alcoholic beverage advertising and for establishing and monitoring a public awareness program concerning the risks of alcohol consumption to pregnant women.

Maxwell joined ATF as regulatory inspector in Chicago in 1964, and within 10 years was Chief Field Operations for the nine-state midwestern region. He was appointed Assistant Regional Director for the North-Atlantic region in January 1976, and later that year he was selected to be the North-Atlantic Regional Regulatory Administrator.

Maxwell has received five ATF awards—two for outstanding performance in detecting violations of the Federal Alcohol Administration Act, one for his work as an instructor for government training seminars, and two for sustained superior performance.

A native of Joliet, Ill., Maxwell received a Bachelor of Science degree in Education and Economics from Northern Illinois University (De Kalb) in 1962. He and his wife, Carol, reside in Wheaton, Md.

Announcement 80-49

Alcohol Fuels Coordinator

ATF centralized all alcohol fuels related functions in Regulatory Enforcement's Special Operations Branch. John V. Jarowski, ATF specialist, has been designated coordinator for this activity, effective August 1, 1980. As coordinator, John will be responsible for:

* Providing information about alcohol fuel to the general public, members of Congress and their constituents.
* Tracking legislation relating to alcohol fuel.
* Coordinating with regional offices to provide speakers for groups interested in alcohol fuel.
* Directing inquiries to sources of technical information on obtaining, setting up and operating distilling apparatus. (ATF itself, does not, however, provide technical advice.)
* Assisting in developing ATF policies which assist alcohol fuel producers.

For fast, responsive answers about alcohol fuel contact: Special Operations Branch, Telephone 202-566-7591.

Announcement 80-50

T.D. ATF-66; Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages

ATF published in the Federal Register for June 13, 1980, Treasury Decision ATF-66 which amends 27 CFR Parts 4, 5 and 7. The contents of this Treasury Decision are summarized as follows: The rule requires ingredient disclosure on labels of wine, distilled spirits, and malt beverages. These regulations, however, provide an exception to this requirement. Under this exception the ingredient list will not be required to appear on the label when the producer, bottler, or importer: (1) elects to make an ingredient list available upon request; (2) places a statement on the front label or a separate strip label notifying the consumer of the availability of an ingredient list and provides the name and, somewhere on the label, a full mailing address in the United States where such an ingredient list can be obtained upon request; and (3) does not place a statement on the label which could be misconstrued to be an ingredient list. This exception gives industry maximum flexibility to provide ingredient information at minimum cost. At the same time, it provides consumers who have the need or desire to avoid various ingredients a means to do so, thus meeting the objective of the regulatory proposal. Because of special health problems, this rule also mandates the disclosure on the label, in all instances, of the presence of FD&C Yellow No. 5 whenever it is used in a product.

Due to the length of this final rule, we are unable to publish it in full text in the ATF Quarterly Bulletin. However, copies are available by writing to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

Announcement 80-51

T.D. ATF-71; Fuel Use of Distilled Spirits

In the Federal Register for June 20, 1980, ATF published Treasury Decision ATF-71, which implements Section 232, Alcohol Fuels, in Part III of Title II of the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223). This Treasury Decision is a temporary rule which provides for the establishment and operation of distilled spirits plants solely for producing, processing and storing, and using or distributing distilled spirits exclusively for fuel use. Pub L. 96-223 vests the Secretary of the Treasury with authority to simplify and liberalize statutory requirements for such alcohol fuel plants. These temporary regulations serve as a notice of proposed rulemaking and will remain in effect until superseded by final regulations.

Interested persons may submit written comments and suggestions regarding the temporary regulations. All comments must be delivered or mailed by October 20, 1980. Comments should be directed to Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

Due to the length of the temporary regulations, we are unable to publish them in full text in the ATF Quarterly Bulletin. However, copies are available by writing to the ATF Distribution Center, 3800 South Four Mile Run Drive, Arlington, Virginia 22206.

Announcement 80-52

Revocation of Permit

In accordance with 27 U.S.C. 204 (e) of the FAA Act, ATF has revoked the importers basic permit of James P. Fox, d/b/a International Chandlers, Southfield, Michigan. The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-53

Revocation of Permit

ATF has revoked the wholesaler's basic permit of Model Distributing Company, Denver, Colorado, in accordance with 27 U.S.C. 204(e) (2) of the FAA Act. The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-54

Revocation of Permit

In accordance with 27 U.S.C. 204(e) of the FAA Act, ATF has revoked the wholesaler's basic permit of the Webb Air Force Base, Nonappropriated Fund Financial Management Branch, Texas. The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-55

Revocation of Permit

In accordance with 27 U.S.C. 204(e) of the FAA Act, ATF has revoked the wholesaler's basic permit of A. Blake Sweatt, d/b/a LaMansion Motor Hotel Package Store, San Antonio, Texas. The permittee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-56

Suspension of Permit

ATF suspended the wholesaler's basic permit of York Capital Beverage Distributors, Inc., York, Pennsylvania, for a period of three consecutive days. The permittee violated 27 U.S.C. 205 (b)(3) by furnishing things of value to certain retail dealers, thereby inducing the retailers to purchase beer from it to the exclusion, in whole or in part, of malt beverages sold or offered for sale by others in interstate commerce.

Announcement 80-57

Suspension of Permit

ATF has suspended Richard's Wine Cellars, Inc., Petersburg, Virginia, for a period of five consecutive days. The permittee was found in violation of numerous sections of the United States Code and regulations promulgated thereunder by: (1) failing to properly identify equipment; (2) failing to pay certain required special occupational taxes; (3) improperly treating wine; (4) not complying with administrative requirements of regulations; and (5) violating various other storage, labeling, recordkeeping and report filing requirements.

Announcement 80-58

Suspension of Permit

ATF suspended the wholesaler's basic permit of Domax, Inc., York, Pennsylvania, for a period of three consecutive days. The permittee violated the provisions of 27 U.S.C. 205 (b)(3) by offering and furnishing to retail dealers certain alcoholic beverages free of charge, thereby inducing the retailers to purchase alcoholic beverages from it to the exclusion, in whole or in part, of similar alcoholic beverages sold or offered for sale by others in interstate commerce.

Announcement 80-59

Suspension of Permit

ATF has suspended the wholesaler's basic permit of Ace Beer Distributors, York, Pennsylvania, for three consecutive days. The wholesaler of malt beverages violated 27 U.S.C. 205(b)(3) of the FAA Act by furnishing equipment and money to retailers thereby inducing them to purchase its products to the exclusion, in whole or in part, of malt beverages sold or offered for sale by others in interstate and foreign commerce.

Announcement 80-60

Suspension of Permits

ATF suspended the wholesaler and importer basic permits of Corydon and Ohlrich, Inc., Chicago, Illinois, for a period of five consecutive days. The permittee violated 27 U.S.C. 205(e) of the FAA Act by importing malt beverages without a certificate of label approval and whose labels were not in conformity with regulations.

Announcement 80-61

Suspension of Permits

ATF has suspended the wholesalers and importer's basic permits of Granada Wines, Inc. d/b/a Harvey Wine Co., Woburn, Massachusetts for a period of four consecutive days. The permittee was found in violation of 26 U.S.C. 5114 by (1) failing to maintain daily records of disposition of alcoholic beverages serially numbered in consecutive order, (2) failing to maintain daily records of dispositions of alcoholic beverages identified as Government file copies, and (3) failing to maintain a daily recapitulation record showing total quantities of distilled spirits disposed of.

Announcement 80-62

Suspension of Permit

ATF has suspended the wholesaler's basic permit of Clair E. Sheffer, t/a Sheffer Beer Distributor, York, Pennsylvania, for a period of five consecutive days. The permittee violated the provisions of 27 U.S.C. 205(b)(3) by providing certain retailers with things of value thereby inducing them to purchase its products to the exclusion, in whole or in part, of malt beverages sold or offered for sale by others in interstate or foreign commerce. Items of property given as inducements included: cash payments, cash reimbursements for beer equipment, and free installation of beer equipment.

Announcement 80-63

Offer in Compromise

ATF has accepted an offer of $5,000 in compromise from Duty Free Shoppers, Ltd., Anchorage, Alaska. The permittee violated 26 U.S.C. 5712 by failing to apply for an amended export warehouse proprietor's permit in a timely manner.

Announcement 80-64

Offer in Compromise

A wholesale beer dealer, Brewery Products Company, York, Pennsylvania, has submitted an offer in compromise in the amount of $15,000. The permittee violated 27 U.S.C. 205 (b)(3) of the FAA Act by reason of giving unlawful inducements to trade buyers to exclude the products of others in interstate commerce. The offer was accepted by ATF in compromise of the civil and criminal liabilities incurred.

Announcement 80-65

Offer in Compromise

An investigation disclosed that Bartolomeo Pio, Inc., Glenside, Pennsylvania, was in violation of 27 U.S.C. 205(b)(3) and (b)(7) of the FAA Act. The importer and wholesaler violated these provisions by inducing retailers to exclude the products of others by furnishing or selling things of value and requiring a retailer to take and dispose of a certain percentage of products. ATF accepted an offer of $1,000 in compromise of the penalties imposed by 27 U.S.C. 207.

Announcement 80-66

Offer in Compromise

Ventura Rodriguez & Sons, Inc., Santurce, Puerto Rico, was found in violation of 27 U.S.C. 205(c)(2), 205(d) and 205(e) of the FAA Act. The wholesaler and importer (1) induced alcoholic beverage purchases by giving a bonus to the purchaser's employees; (2) sold alcoholic beverages on consignment or conditional sale or with the privilege of return; and (3) imported and sold distilled spirits without label approval certificate and in containers inaccurately labeled concerning volume of contents. ATF has accepted an offer of $2,500 in compromise of the above violations.

Announcement 80-67

Offer in Compromise

An offer of $35,000 was accepted by ATF in compromise of the criminal and civil liabilities incurred by Heublein, Inc., Allen Park, Michigan. The proponent violated the provisions of 26 U.S.C. 5206(c), 5207 and incurred the penalties imposed by 26 U.S.C. 5601, 5603, 7212(a) and 7268 by: (1) failing to properly mark cases, (2) failing to keep accurate records, and (3) unlawfully removing distilled spirits on which the tax had not been paid.

Announcement 80-68

Offer in Compromise

Margolis Wines and Spirits, Inc., King of Prussia, Pennsylvania, a wholesaler of distilled spirits, violated 26 U.S.C. 5114 and 27 U.S.C. 205 (c)(2) of the FAA Act by: failing to establish and/or maintain records as prescribed by regulations, and inducing a retailer to purchase its products to the exclusion of others by supplying gifts to two of its employees. ATF accepted an offer of $3,000 in compromise of the violations incurred.

Announcement 80-69

Offer in Compromise

A distiller, Jacquin-Florida Distilling Company, Auburndale, Florida, violated 26 U.S.C. 5201, 5202 and 5207 by failing to keep and maintain proper records required by regulations and by failing to account for four barrels of grape brandy. In compromise of the violations incurred, ATF accepted an offer of $5,000.

Announcement 80-70

Offer in Compromise

An inspection conducted at Thompson Hayward Chemical Co., Chicago, Illinois, disclosed violations of 26 U.S.C. 5001, 5206, 5207, 5271, and 5275. The proprietor failed to identify shipments of specially denatured alcohol; failed to consecutively number all packages containing specially denatured alcohol; failed to properly mark and consecutively number packages containing specially denatured alcohol; and failed to maintain required records which reflect details of all specially denatured alcohol received, lost, destroyed and otherwise distributed. An offer of $2,500 was accepted by ATF in compromise of the civil and criminal liabilities incurred.

Announcement 80-71

Offer in Compromise

A distiller, S. S. Pierce Company, Woburn, Massachusetts, was found in violation of 27 U.S.C. 205(e) of the FAA Act by (1) using labels on domestic rum bearing false statements concerning age; (2) importing, bottling, and labeling rum for which no certificate of age and origin was on file; and (3) falsely stating that such rum was bottled under Government supervision and incorrectly identifying the importer. In compromise of the civil and criminal liabilities incurred, ATF accepted an offer of $500.

Announcement 80-72

Offer in Compromise

A wholesale liquor dealer, Joseph H. Reinfield, Inc., Union, New Jersey, was found in violation of 27 U.S.C. 205(e) of the FAA Act. The permittee (1) removed labels from bottled whiskey, (2) labeled and sold whiskey without label approval, and (3) labeled and sold distilled spirits without a statement of alcohol content on the brand label. ATF accepted an offer of $1,000 in compromise of the civil and criminal liabilities incurred.

Announcement 80-73

Semiannual Agenda of Regulations

ATF published a notice in the Federal Register of August 1, 1980, the Semiannual Agenda of Regulations. This notice concerns the Regulatory Improvement Implementation Program which implements Executive Order 12044 and Treasury Directive 50-04.F. The required semiannual agenda is designed to give the public adequate notice of ATF regulatory activities which will be under development and review during the period August 1, 1980 through February 1, 1981. Information concerning specific items appearing in the following semiannual agenda should be directed to the appropriate contact person indicated. The next semiannual agenda will be published in the Federal Register for February 1, 1981.

PART I—REGULATIONS UNDER DEVELOPMENT

TITLE/CITATION	SUMMARY
ALCOHOL	
50 ml Container for Wine 27 CFR 4.73	*Description*: Adds a 50 ml (1.7 fluid ounce) size to the standards of fill for wine. [Rev.] *Need*: Some types of wine, especially sherry and port wines, have traditionally been produced in a miniature size for sale by airlines and railroads. Under current regulations, no sizes smaller than 100 ml may be used in the United States. *Legal basis*: 27 U.S.C. 205. *Contact*: Charles N. Bacon. *Status*: NPRM published March 17, 1980 (45 FR 17025); comment period ended May 16, 1980; comments are being evaluated. *Priority*: C.
Grape Brandy 27 CFR Part 5	*Description*: ATF will consider whether a standard of identity for "varietal grape brandy" should be added to the present labeling designations of "brandy" and "grape brandy". [Rev.] *Need*: Responds to a petition to permit the labeling and advertising of brandies as produced from specific varieties of grapes. *Legal basis*: 27 U.S.C. 205. *Contact*: Armida N. Stickney. *Status*: ANPRM published January 2, 1980 (45 FR 50); comment period ended June 2, 1980; comments are being evaluated. *Priority*: B.
Credit to Retailers in Arrears 27 CFR Part 6	*Description*: ATF will consider what approach to take regarding repayment of indebtedness where producers/wholesalers have extended credit to retail liquor dealers in excess of the usual and customary credit period of 30 days. *Need*: Some wholesalers and producers have created "tied-houses" with retailers by advancing large amounts of credit for long periods of time. Revenue Ruling 54-162 does not adequately resolve this problem. *Legal basis*: 27 U.S.C. 205.

PART I—REGULATIONS UNDER DEVELOPMENT—Continued

TITLE/CITATION	SUMMARY
	Contact: Charles N. Bacon. *Status*: NPRM to be published in September 1980. *Priority*: A.
Prohibited Trade Practices under the FAA Act 27 CFR Parts 6, 8, 10, and 11	*Description*: Implements the trade practice subsections, 5(a)-5(d), of the FAA Act. Regulations will specify practices which are prohibited by the FAA Act and will list exceptions to those prohibitions. [Rev.] *Need*: Provisions of the FAA Act have been implemented through letters. ATF Rulings, and circulars. A need exists to update, revise, and codify these rulings. *Legal basis*: 27 U.S.C. 205. *Contact*: Charles N. Bacon. *Status*: T.D. under development; publication targeted for September 1980. *Priority*: A.
Proposed Viticultural Areas 27 CFR Part 9	*Description*: Each project would establish an American viticultural area for purposes of labeling and advertising of wine. [New] *Need*: Respond to petitions from industry members to establish viticultural areas. *Legal basis*: 27 U.S.C. 205. *Contact*: Tom Minton. *Status*: Refer to the list of projects which follows. *Priority*: A.
1. Augusta, Missouri	*Status*: T.D. published June 20, 1980 (45 FR 41632).
2. The Pinnacles, Napa Valley, California	*Status*: Public hearing transcript under study. (Inquire contact person for further information on status.)
3. Los Carneros, North Coast, Santa Cruz, Santa Maria Valley, Sonoma Valley, California	*Status*: NPRM under internal development; publication targeted for August 1980; public hearing for January 1981.
4. Lime Kiln Valley, Guenoc Valley, San Pasqual Valley, California Fennville, Michigan	*Status*: NPRM under internal development; publication targeted for September 1980; public hearing for February 1981.
Determination of Color in White Wine and Treatment of Sherry with Activated Carbon 27 CFR Part 240	*Description*: ATF proposed to (1) replace the Lovibond Method with the Association of Official Analytical Chemists (AOAC) Method 11.B01-11.B02 for determining color in wine, (2) provide winemakers continuing authority to treat sherry with activated carbon in order to remove excess color, and (3) set a new limitation on the amount of activated carbon to remove excess coloring from sherry. [Rev.] *Need*: Regulatory changes may be necessary to accommodate technological advances. *Legal basis*: 26 U.S.C. 5382. *Contact*: Armida N. Stickney.

TITLE/CITATION	SUMMARY
	Status: NPRM published July 10, 1979 (44 FR 40351); comment period closed September 10, 1979; T.D. publication targeted for October 1980. *Priority*: C.
Alcohol Fuels; Implementing a portion of the Crude Oil Windfall Profit Tax Act of 1980 27 CFR Part 19	*Description*: The new law vests the Secretary of the Treasury with authority to provide for the waiver of provisions of law and regulations for distilled spirits plants established solely to produce, process and store, and use or distribute distilled spirits exclusively for fuel use. [New and Rev.] *Need*: ATF issued temporary regulations, effective July 1, 1980, to implement the law. *Legal basis*: 26 U.S.C. 5181. *Contact*: Norm Blake. *Status*: Temporary T.D. with N. published June 20, 1980. (45 FR 41838). Comment period ends October 20, 1980. T.D. publication targeted for February 1981. *Priority*: A.
Regulations Implementing the Distilled Spirits Tax Revision Act of 1979 27 CFR Parts 5, 13, 19, 170, 173, 194, 195, 196, 197, 200, 211, 212, 213, 231, 240, 250, 251, and 252	*Description*: The Distilled Spirits Tax Revision Act of 1979 (1) eliminated the wine gallon method for imposing the distilled spirits tax, (2) eliminated the rectification tax, and (3) converted DSP/s from the former distilled spirits tax system to an all-in-bond tax system. [Rev.] *Need*: The Act was passed by Congress as a part of the Trade Agreements Act of 1979 and became effective on January 1, 1980. As a result, ATF issued temporary regulations. *Legal basis*: Statutory provisions are contained in 26 U.S.C. Chapter 51. *Contact*: Edward J. Sheehan. *Status*: Temporary T.D. with N. published December 11, 1979 (44 FR 71612, 44 FR 71613). Comment period on temporary regulations ends September 11, 1980. T.D. publication targeted for March 1981. However, pending legislation (H.R. 7171) to revert to the pre-1980 tax treatment of wine and flavors could delay issuance of the final rule. *Priority*: A.
Reporting Taxes Due to the Governments of Puerto Rico and the Virgin Islands 27 CFR Part 19	*Description*: ATF proposes to move the reporting requirements for Puerto Rican and Virgin Islands spirits bottled at domestic distilled spirits plants from the point such spirits enter the processing account to the point of tax determination. This project requires active coordination with the insular governments and with other Federal agencies involved with the transfer of tax revenues. Their input will have a significant impact on any regulatory changes finally adopted. *Need*: This method for determining the taxes to be transferred to the treasuries of Puerto Rico and the Virgin Islands would more accurately match taxes transferred with actual revenues collected and would be consistent with the method followed prior to January 1, 1980. *Legal basis*: 27 U.S.C. 5555 and 26 U.S.C. 5207. *Contact*: John Ferrence.

PART I—REGULATIONS UNDER DEVELOPMENT—Continued

TITLE/CITATION	SUMMARY
	Status: Revision under internal development. *Priority*: A.
New Completely Denatured Alcohol Formula No. 20 27 CFR Parts 211 and 212	*Description*: Establishes a new completely denatured alcohol formula suitable for blending in motor fuels. [New] *Need*: A new completely denatured alcohol formula may be more suitable for blending with gasoline in the production of gasohol. *Legal basis*: 26 U.S.C. 5241. *Contact*: Norman P. Blake. *Status*: Temporary T.D. with N. published March 27, 1980 (45 FR 20420); comment period ended May 27, 1980; publication of T.D. targeted for August 1980. *Priority*: A.
Special Tax 27 CFR Parts 179, 194, 197, 245, 250, 251, and 252	*Description*: Implements adjustments in interest applicable to overpayments and underpayments of special tax, and conforms ATF regulations to changes made by the Internal Revenue Service on Form 11. [Rev.] *Need*: Regulations need to be revised to conform to Form 11, and to revise the interest rate statement. *Legal basis*: P. L. 93-625 and 26 U.S.C. 6621 and 7805. *Contact*: Steve Simon. *Status*: T.D. w/o N. published May 21, 1980 (45 FR 33978).

PROCEDURES & PRACTICES

TITLE/CITATION	SUMMARY
Electronic Fund Transfers of Alcohol Excise Tax Payments 27 CFR Parts 19, 70, 170, 240, 245, and 270 (26 CFR Parts 301 and 601)	*Description*: This regulation project would modify the present system of collecting alcohol excise taxes by return. The proposed system would require that certain alcohol taxpayers make their payments via electronic fund transfer directly to financial institutions. [Rev.] *Need*: This project would implement the cash management recommendations resulting from the President's Reorganization Project. *Legal basis*: 26 U.S.C. 5061(a), 5703(b), and 7805. *Contact*: Armida N. Stickney or James A. Hunt. *Status*: NPRM published June 6, 1980 (45 FR 38258); comment period closes August 5, 1980. *Priority*: A. *Regulatory Analysis*: A draft-regulatory analysis has been propared.
ATF Procedural Rules 27 CFR Parts 70 and 71 (26 CFR Parts 301 and 601)	*Description*: Incorporates all of the procedural requirements which relate to ATF and which now appear in Internal Revenue Service Regulations, 26 CFR Parts 301 and 601, into ATF procedural regulations. [Rev.] *Need*: Eliminates a source of confusion and places all of the procedural regulations into Title 27: Alcohol, Tobacco Products and Firearms. *Legal basis*: 26 U.S.C. 7805. *Contact*: Steve Simon.

PART I—REGULATIONS UNDER DEVELOPMENT—Continued

TITLE/CITATION	SUMMARY
	Status: T.D. without N. under internal development; publication targeted for December 1980. *Priority*: B.
Appeal Procedure for Claims for Abatement Remission or Refund of Excise Taxes 27 CFR Part 70	*Description*: Establishes an appeal procedure whereby claims denied at the regional level may be appealed to the ATF Director. [New] *Need*: Current regulations do not provide an appeal process for a claimant who feels that a claim was unfairly denied by the regional regulatory administrator (except in the case of newly discovered information). *Legal basis*: 26 U.S.C. 7805. *Contact*: John Ference. *Status*: Target date for publication of NPRM is October 1980. *Priority*: A.
Disclosure of Tax Return Information 27 CFR Part 71	*Description*: Proposed regulations would implement Title XII of P. L. 94-455, relating to disclosure of tax return information. [New] *Need*: Due to changes made by P. L. 94-455, regulations may be needed to govern disclosure of tax return information. *Legal basis*: 26 U.S.C. 6103. *Contact*: Armida N. Stickney. *Status*: Currently under internal study and development. *Priority*: A.

TOBACCO PRODUCTS

TITLE/CITATION	SUMMARY
Records Requirement for Cigarette Distributors 27 CFR Part 296, Subpart F	*Description*: Implements recordkeeping provisions of P. L. 95-575 in order to curtail trafficking in contraband cigarettes. [New] *Need*: Records to trace the movement of cigarettes are essential to enforcement of this law. *Legal basis*: P. L. 95-578 (18 U.S.C. 2343). *Contact*: Tom Minton. *Status*: T.D. published July 21, 1980 (45 FR 48609). Effective date: September 19, 1980. *Priority*: A.
Tobacco Excise Tax Accleration Project 27 CFR Parts 270, 275, and 285	*Description*: This regulatory project would change the deferral and return periods for tobacco excise tax payments and would use electronic fund transfers for the payment of those excise taxes. [Rev.] *Need*: This project would implement the cash management recommendations resulting from the President's Reorganization Project. *Legal basis*: 26 U.S.C. 5061(a), 5703(b), and 7805. *Contact*: Armida N. Stickney or James A. Hunt. *Status*: NPRM published June 6, 1980 (45 FR 38271); comment period closes August 5, 1980. *Priority*: A. *Regulatory Analysis*: A draft regulatory analysis has been prepared.

PART II—REGULATIONS UNDER REVIEW

TITLE/CITATION	SUMMARY
ALCOHOL	
Wine; Standard of Identity for Cider 27 CFR Part 4	*Description*: Liberalizes standard of identity for cider by permitting cider to be made from a mixture of apples and pears. [Rev.] *Need*: Responds to a petition from an industry member. *Legal basis*: 27 U.S.C. 205. *Contact*: Tom Minton. *Status*: ANPRM published January 15, 1980 (45 FR 2855); comment period ended March 17, 1980; comments under review. *Priority*: B.
Wine; Bottles per Shipping Case 27 CFR Part 4	*Description*: Eliminates the regulatory requirement that wine be packed with a specified number of bottles per case. [Res.] *Need*: The requirement to pack a specified number of bottles per case has resulted in numerous requests for exemptions due to various reasons. These exemptions have proven to be an administrative burden on ATF, and have hindered industry. Elimination of this requirement would remove an unnecessary restriction. *Legal basis*: 27 U.S.C. 205. *Contact*: James A. Hunt. *Status*: Incorporated in the project to add a 50 ml size to the standards of fill for wine (See Part I).
Labeling of Wine 27 CFR Part 4	*Description*: Amends labeling regulations to make bulkpacked wine for consumers conform to same labeling requirements as wine bottled in bottles. [Rev.] *Status*: This project is suspended due to manpower allocation to regulation projects with greater public impact.
Health Hazards Related to Alcoholic Consumption 27 CFR Parts 4, 5, and 7	*Description*: To consider the need for health warning labels or alternate programs. [New] *Contact*: Michael Dressler at 202-566-7591. *Status*: A notice with invitation to comment was published February 26, 1980 (45 FR 12577). Under P. L. 96-180, a preliminary report on proposed Government actions was sent to the President and the Congress June 1, 1980. Under further study by the Treasury Department and the Health and Human Services Department.
Advertising of Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description*: The advertising regulations under section 5(f) of the FAA Act are being reviewed for updating and possible revision. [Rev.] *Need*: Regulatory changes may be necessary to accommodate social and technological advances. *Legal basis*: 27 U.S.C. 205. *Contact*: Roger Bowling. *Status*: ANPRM published on November 21, 1978 (43 FR 54266); NPRM under internal development; publication targeted for October 1980. *Priority*: A.

TITLE/CITATION	SUMMARY
Partial Ingredient Labeling for Wine, Distilled Spirits, and Malt Beverages 27 CFR Parts 4, 5, and 7	*Description*: A major revision of FAA labeling requirements for all domestic and imported alcoholic beverages would require that labels list essential components, colorings, flavorings, and preservatives or provide on the label an address from which this information can be obtained. [Rev.] *Need*: This proposal would assist consumers in identifying ingredients contained in alcoholic beverages. *Legal basis*: 27 U.S.C. 205. *Contact*: Norman P. Blake or Roger L. Bowling. *Status*: T.D. published June 13, 1980 (45 FR 40538); regulations effective October 14, 1980, with compliance mandatory January 1, 1983. *Priority*: A. *Regulatory Analysis*: A regulatory analysis has been prepared.
Distilled Spirits Liquor Bottles 27 CFR Parts 19, 173 194, 250, and 251	*Description*: Eliminates registration of liquor bottle manufacturers with ATF. Liquor bottle indicia requirement would be amended to read "Liquor Bottle" and transferred to Parts 19, 250, and 251. Simplifies procedures for approval by ATF of distinctive liquor bottles. [Res. & Rev.] *Need*: Contains substantive rules which have not been significantly revised in the preceding six years. *Legal basis*: 26 U.S.C. 5301 and 7805. *Contact*: Robert L. White. *Status*: NPRM currently under internal development; publication targeted for September 1980. *Priority*: B.
Bonding Requirements 27 CFR Part 211	*Description*: Bond requirements would be eliminated. [Res.] *Need*: A study of bonding requirements and previous bond defaults has shown that it may be possible to eliminate bond requirements for some taxpayers wtihout jeopardy to Federal revenues. *Legal basis*: 26 U.S.C. 5272. *Contact*: John Linthicum. *Status*: NPRM publication targeted for November 1980. *Priority*: B.
Elimination of Bonding Requirements for Experimental DSP/s 27 CFR 201.65	*Description*: Reduces bonding requirements on certain experimental DSP/s producing alcohol for fuel use. [Rev.] *Status*: Project canceled due to new law and implementing regulations. (See Part I, Alcohol Fuels, 27 CFR Part 19.)
Formulas for Denatured Alcohol and Rum 27 CFR Part 212	*Description*: This regulatory project will update, clarify, simplify, and reissue the regulations relating to formulas of denatured alcohol and rum. [Rev.] *Need*: Revision of 27 CFR Part 212 may be necessary to accommodate industry practices and changes in chemical terminology. *Legal basis*: 26 U.S.C. 5241. *Contact*: Steve Simon. *Status*: NPRM is under internal development; publication targeted for October 1980. *Priority*: C.

PART II—REGULATIONS UNDER REVIEW—Continued

TITLE/CITATION	SUMMARY
Wine; Recodification 27 CFR Parts 240, 231, and 170 Subpart Z	***Description*:** Updates, simplifies, and clarifies regulations relating to wine. Incorporates all regulations and outstanding ATF rulings relating to the production of wine into one CFR Part. [Rev.] ***Need*:** Present rules are at times redundant and confusing. ***Legal basis*:** 26 U.S.C. 7805. ***Contact*:** Tom Minton. ***Status*:** ANPRM published May 22, 1979 (44 FR 29691); Comment period for ANPRM extended until August 20, 1980. ***Priority*:** B.
Production of Beer 27 CFR Part 245	***Description*:** A reissuance of regulations relating to the production of beer. Requirements would be simplified, and technological advances will be incorporated into the regulations. [Rev.] ***Need*:** Contains substantive rules which have not been significantly revised in the preceding six years, and which are complex and may be simplified and clarified. ***Legal basis*:** 26 U.S.C. 5051-5056, 26 U.S.C. 5401-5417. ***Contact*:** Charles N. Bacon. ***Status*:** Revision under internal development; NPRM publication targeted for February 1981. ***Priority*:** B.
Export of Bulk Beer 27 CFR Parts 245 and 252	***Description*:** Allows the export of beer in bulk containers without payment of tax. [Res.] ***Need*:** Would eliminate an unnecessary burden on the brewing industry. ***Legal basis*:** 26 U.S.C. 5053. ***Contact*:** Charles N. Bacon. ***Status*:** NPRM under review within ATF. ***Priority*:** C.
Use of Alternatives to Strip Stamps by Non-domestic Bottlers and Importers 27 CFR Parts 250 and 251	***Description*:** Would allow for the use of alternative devices by foreign, Puerto Rican, and Virgin Islands bottlers of distilled spirits and by importers. [Rev.] ***Need*:** To extend to non-domestic bottlers and importers the same privilege to use alternative devices as domestic bottlers currently enjoy. ***Legal basis*:** 26 U.S.C. 5202, 5235, and 7805. ***Contact*:** Robert White. ***Status*:** NPRM under internal development; publication targeted for September 1980. ***Priority*:** C.
U.S. Customs Certification on Distilled Spirits from Puerto Rico 27 CFR Part 250	***Description*:** This regulation changes the Customs certification on distilled spirits entering the United States from Puerto Rico. [Rev.] ***Need*:** The U.S. Customs Service does not consider Puerto Rican distilled spirits as an import; therefore, it may be necessary to revise the certification procedures for spirits which are brought into the United States from Puerto Rico. ***Legal basis*:** 26 U.S.C. 7805. ***Contact*:** James A. Hunt.

PART II—REGULATIONS UNDER REVIEW—Continued

TITLE/CITATION	SUMMARY
	Status: NPRM under internal development; publication targeted for winter 1981. *Priority*: A.
Exportation of Wine, Distilled Spirits, and Malt Beverages 27 CFR Part 252	*Description*: This regulatory project will update, clarify, simplify, and reissue the regulations relating to the exportation of wine, distilled spirits, and malt beverages. [Rev.] *Status*: This project is suspended due to manpower allocation to regulation projects with greater public impact.
Markings on Cases of Liquors for Export 27 CFR Part 252	*Description*: Deletes the regulatory requirement to mark packages or cases of wine, beer, or distilled spirits for export with the words "Without Payment of Tax" or "Drawback Claimed". [Rev.] *Need*: The requirement to mark cases of distilled spirits, wine, or beer for export is burdensome to proprietors of DSP/, vintners, and brewers; and this requirement does not serve to protect the revenue. *Legal basis*: 26 U.S.C. 5206, 5368, 5412. *Contact*: Charles N. Bacon. *Status*: Revision under internal development; NPRM publication targeted for September 1980. *Priority*: A.
EXPLOSIVES	
Amendments to Explosives Regulations 27 CFR Part 181	*Description*: Proposed amendments include: (1) a lengthened renewal period for licenses and permits, (2) an amended inventory of explosives, (3) revision of recordkeeping and storage requirements, and (4) addition of new terms and revision of existing language. [Rev.] *Need*: The explosives regulations have not been significantly revised in the past six years. Many technological advances may have made these regulations obsolete. *Legal basis*: 18 U.S.C. 847. *Contact*: James A. Hunt. *Status*: Revision under development; NPRM targeted for September 1980. *Priority*: A.
FIREARMS	
Definition of "Engaged in the Business" 27 CFR Part 178	*Description*: This regulation project attempts to define the term "engaged in the business". The law and regulations do not define this term. [Rev.] *Need*: Is the subject of criticism by the public and of request by the Congress for review. *Legal basis*: 18 U.S.C. 926. *Contact*: Robert White. *Status*: ANPRM published December 19, 1979 (44 FR 75186); comment period ended April 17, 1980; comments are being evaluated. *Priority*: A.

TITLE/CITATION	SUMMARY
Sales of Firearms at Gun Shows 27 CFR Part 178	*Description*: This regulation project would allow licensees to sell firearms at organized gun shows held in the same State as the licensee's premises. [Rev.] *Need*: Present regulations require licensees to conduct business only at the address shown on the license. ATF wishes to determine if licensees should be permitted to conduct business at gun shows. *Legal basis*: 18 U.S.C. 926. *Contact*: James A. Hunt. *Status*: ANPRM published April 22, 1980 (45 FR 26982); coment period ended June 23, 1980; comments are being evaluated. *Priority*: A.
Suspension Procedures for firearms Licenses and Explosives Licenses or Permits 27 CFR Parts 178 and 181	*Description*: This regulation would allow ATF to suspend the license or permit of Federal firearms licensees or of explosives licensees or permittees. [Rev.] *Need*: When adverse administrative actions are taken against the holder of a Federal firearms license or explosives license or permit, current regulations provide only for the revocation of, or for the denial of an application for, the license or permit. ATF wishes to determine if suspension of the license or permit for a period of time should be used as an alternative adverse administrative action. *Legal basis*: 18 U.S.C. 847 and 926. *Contact*: Norman Blake. *Status*: ANPRM published May 20, 1980 (45 FR 33651); comment period ended July 21, 1980; comments are being evaluated. *Priority*: A.
TOBACCO PRODUCTS	
Shipment of Tobacco Articles from Puerto Rico to the United States 27 CFR Part 275	*Description*: Eliminates U.S. Customs Service involvement on shipment of Puerto Rican tobacco products to the United States. Eliminates direct ATF supervision of tobacco product shipments from Puerto Rico. [Res.] *Need*: Would eliminate administration burden for government and industry. *Legal basis*: 26 U.S.C. 7651. *Contact*: John Linthicum. *Status*: Under internal deelopment; NPRM targeted for March 1981. *Priority*: B.
Manufacturer's Identification on Tobacco Products Packages 27 CFR Parts 270 290, and 295	*Description*: Removes a regulatory requirement relating to labeling. Permits identification of the manufacturer of cigarettes or cigars by means of a code on the label. [Rev.] *Need*: Special permission for manufacturer identification by code has been approved for use on some labels in certain cases, and no jeopardy to the revenue has been experienced. Consequently, all manufacturers may be permitted to use this method, on condition that ATF be permitted to identify the codes to any member of the public making a request for such identification.

PART II—REGULATIONS UNDER REVIEW—Continued

TITLE/CITATION	SUMMARY
	Legal basis: 26 U.S.C. 5723. *Contact*: Steve Simon. *Status*: NPRM currently under internal development; publication targeted for September 1980. *Priority*: C.
Markings on Packages of Large Cigars 27 CFR Parts 270, 275, 290, and 295	*Description*: Removes the requirement to mark the wholesale price on packages of large cigars. This requirement was added by P. L. 94-455. [Res.] *Need*: The requirement has not been invoked by those affected or by ATF for more than one year. *Legal basis*: P. L. 94-455 and 26 U.S.C. 7805. *Contact*: Steve Simon. *Status*: Publication of T.D. w/o N. targeted for September 1980. *Priority*: C.

TABLE OF ABBREVIATIONS

ABBREVIATION	MEANING
ANPRM	Advance notice of proposed rulemaking
ATF	Bureau of Alcohol, Tobacco and Firearms
CFR	Code of Federal Regulations
DSP	Distilled spirits plant
FR	Federal Register
FAA Act	Federal Alcohol Administration Act
FDA	Food and Drug Administration
New	New regulation is proposed
NPRM	Notice of proposed rulemaking
P. L.	Public Law
Res.	Rescission of an existing regulation
Rev.	Revision or amendment of an existing regulation
T.D.	Treasury decision
T.D. with N.	[Temporary] Treasury decision with notice
T.D. w/o N.	Treasury decision without notice
Treasury	Department of the Treasury

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No. 1980—4
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quarterly bulletin

Treasury Decisions, Rulings, and Procedural and Administrative Matters Concerning Alcohol, Tobacco, Firearms, and Explosives

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Bureau of Alcohol, Tobacco and Firearms

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by DO R O 1100.25

NOTICE

Comments concerning the contents of this issue may be directed to Bureau of Alcohol, Tobacco and Firearms, Trade and Consumer Affairs Division, Washington, D.C. 20226.

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INTRODUCTION

The Alcohol, Tobacco and Firearms Bulletin is the authoritative instrument of the Director, Bureau of Alcohol, Tobacco and Firearms, for announcing official rulings and procedures of the Bureau and for publishing Treasury Decisions, legislation, administrative matters, and other items of general interest. The Bulletin incorporates, into one publication, all matters of the Bureau which are of public record.

It is the policy of the Bureau to publish in the Bulletin all substantive rulings necessary to promote a uniform application of all laws administered by the Bureau as well as all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin (including those published prior to July 1, 1972, in the Internal Revenue Bulletin). All rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, industry regulations appearing in internal management documents and statements of internal practices and procedures that affect the rights and duties of the public are published.

Bureau Rulings represent the conclusions of the Bureau on the application of the law to the entire state of facts involved. In those that are based on positions taken in rulings to industry members or technical advice to Bureau field offices, identifying details and confidential information are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements concerning disclosure of information obtained from the public.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered. Concerned parties are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

FOREWORD

The Alcohol, Tobacco and Firearms Bulletin is prepared in six parts as follows:

PART I—TREASURY DECISIONS
PART II—BUREAU RULINGS
PART III—BUREAU PROCEDURES

Respectively, these three parts contain regulations of the Department of the Treasury which relate to the laws administered by the Bureau of Alcohol, Tobacco and Firearms; rulings of the Bureau which interpret the requirements of such law and regulations; and procedures of the Bureau which establish methods for performing operations in compliance with the requirements of such law and regulations. Each of these parts is divided into four subparts covering matters relating to alcohol, tobacco, firearms and explosives.

PART IV—LEGISLATION. This part is divided into two subparts as follows: Subpart A, Currently Enacted Legislation and Subpart B, Committee Reports.

PART V—ADMINISTRATIVE MATTERS. This part is divided into three subparts as follows: Subpart A, Regulations pertaining to procedural and administrative practices of the Bureau; Subpart B, Statements of Organization and Function; Subpart C, Treasury Department Orders and Delegation Orders.

PART VI—ANNOUNCEMENTS. This part contains announcements of court decisions, notices of hearing and notices of proposed rulemaking published in the Federal Register, administrative actions taken by the Bureau, and items of general interest.

DEFINITIONS

Rulings and Procedures that have an effect on previous rulings or procedures use the following defined terms to describe the effect:

AMPLIFIED is used in a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation as set forth in the new ruling. Thus, if an earlier ruling held that a principal applied to A, and the new ruling holds that the same principal also applies to B, the earlier ruling is amplified.

CLARIFIED is used in a situation where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

DECLARED OBSOLETE is used in a situation where a previously published ruling is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are declared obsolete because of changes in law or regulations. A ruling may also be declared obsolete because its substance has been included in regulations subsequently adopted.

MODIFIED is used in a situation where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, but the new ruling holds that it applies to both A and B, the prior ruling is modified.

REVOKED is used in a situation where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling. Rulings which have been revoked have no further effect.

DEFINITIONS

SUPERSEDED is used in a variety of situations. The term may be used where the new ruling amplifies a prior ruling *if* both the position taken in the prior ruling and the position as amplified are contained in the text of the new ruling. The term may be similarly used where the new ruling clarifies or modifies a prior ruling. The term may also be used where, for the purpose of updating references, the new ruling does nothing more than restate the substance and situation of a prior ruling. For example, a ruling issued under former statutes and regulations (e.g. the 1939 Code—26 CFR Part 225) may be reissued under the current statutes and regulations (e.g. the 1954 Code—27 CFR Part 201). Lastly, the term may be used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings.

SUPPLEMENTED is used in situations in which a list, such as a list of curios and relics, is published in a ruling and that list is expanded by adding further items in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

ABBREVIATIONS

The following abbreviations in current use and formerly used will appear in material published in the Bulletin:

A,B,C, etc.—The name of individuals
ATF—Bureau of Alcohol, Tobacco and Firearms
ATFB—Alcohol, Tobacco and Firearms Bulletin
ATF Proc.—ATF Procedure
ATF Rul.—ATF Ruling
C.B.—Cumulative Bulletin
Ct.D.—Court Decision
CFR—Code of Federal Regulations
D.O.—Delegation Order
E.O.—Executive Order
FAA Act—Federal Alcohol Administration Act
F.R.—Federal Register
M,N,X,Y,Z, etc.—The names of corporations, places and businesses, according to context
Pub. L.—Public Law
Rev. Proc.—Revenue Procedure
Rev. Rul.—Revenue Ruling
Stat.—Statutes at Large
T.D.—Treasury Decision
T.D.O.—Treasury Department Order
U.S.C.—United States Code

x and y are used to represent certain numbers and when used with the word "dollars" represent sums of money.

Treasury Decisions PART I

Subpart A—ALCOHOL

TITLE 27—ALCOHOL, TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-74 [1]

27 CFR Parts 6, 8, 10 and 11

Unlawful Trade Practices Under the Federal Alcohol Administration Act

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF).

ACTION: Final rule.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms is adopting final regulations implementing the unlawful trade practice provisions of the Federal Alcohol Administration Act (FAA Act). Those specific provisions of the FAA Act include section 5(a), "Exclusive outlet"; section 5(b), "Tied-house"; section 5(c), "Commercial bribery"; and section 5(d), "Consignment sales." The purpose of these regulations is to liberalize permitted marketing practices within the existing statutory framework, to modernize, simplify and to clarify the interpretation of the FAA Act. These regulations were proposed on August 1, 1979, in Notice No. 327 (44 FR 45298), and have been adopted, with modifications, after consideration of all written comments and oral testimony received at five public hearings in September and October 1979.

DATE: These regulations are effective on Nov. 24, 1980.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

THE FEDERAL ALCOHOL ADMINISTRATION ACT

Sections 5(a)-(d) of the Federal Alcohol Administration Act (FAA Act or Act), 27 U.S.C. 205(a)-(d), prohibit within jurisdictional limits, marketing practices which are considered unfair competition. These sections entitled "Exclusive outlet", "Tied-house", "Commercial bribery", and "Consignment sales", delineate and proscribe unfair trade practices in the alcoholic beverage industry. The jurisdictional limits in sections 5(a)-(d) of the Act in most cases require that the elements of inducement, exclusion of a competitor's product and of interstate commerce be present for the proscribed practices to violate the Act.

Although other sections of the FAA Act have been interpreted by regulations issued since 1935, regulations concerning prohibited trade practices have been issued in only two areas. As required by the Act, regulations providing exceptions to the general prohibitions of section 5(b)(3) were issued in 1935. In addition, regulations establishing the usual and customary credit period were issued in 1938. Rather than issuing regulations implementing the other provisions of sections 5(a)-(d) of the FAA Act, ATF and its predecessor agencies have utilized rulings and circulars in order to keep industry members informed of the requirements and application of the Act. The purpose of these regulations is, therefore, to liberalize permitted marketing practices within the existing statutory framework, to modernize, simplify and to clarify the interpretation of the FAA Act.

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[1] Discussion of comments on this Treasury Decision omitted. If needed, see Federal Register dated September 23, 1980, page 63242.

ATF recognizes that the FAA Act has not been substantially amended since its enactment in 1935. Consequently, the Act may not adequately address all aspects of competition in today's alcoholic beverage industry. To help remedy this, ATF is currently reviewing the Act for possible recommended legislative changes. In particular, ATF is seeking to determine whether the level of regulation now required by statute can be reduced.

* * * * *

TREATMENT OF REVENUE RULINGS

The following revenue rulings will either be incorporated into the proposed regulations, or their provisions will become obsolete at the time these regulations become effective: Revenue Rulings 54-131, 1954-1 C.B. 341; 54-151, 1954-1 C.B. 338; 54-175, 1954-1 C.B. 340; 54-176, 1954-1 C.B. 340; 54-177, 1954-1 C.B. 340; 54-260, 1954-2 C.B. 572; 54-261, 1954-1 C.B. 573; 54-262, 1954-2 C.B. 575; 54-279, 1954-2 C.B. 582; 54-286, 1954-2 C.B. 576; 54-295, 1954-2 C.B. 572; 54-303, 1954-2 C.B. 576; 54-337, 1954-2 C.B. 573; 54-355, 1954-2 C.B. 577; 54-377, 1954-2 C.B. 577; 54-390, 1954-2 C.B. 578; 54-509, 1954-2 C.B. 561; 54-577, 1954-2, C.B. 592; 54-620, 1954-2 C.B. 580; 54-621, 1954-2 C.B. 581; 54-622, 1954-2 C.B. 581; 55-42, 1955-1 C.B. 610; 55-166, 1955-1 C.B. 610; 55-167, 1955-1 C.B. 610; 55-168, 1955-1 C.B. 611; 55-401, 1955-1 C.B. 611; 55-403, 1955-1 C.B. 609; 55-551, 1955-2 C.B. 732; 55-567, 1955-2 C.B. 732; 55-568, 1955-2 C.B. 731; 56-204, 1956-1 C.B. 808; 56-205, 1956-1 C.B. 809; 56-206, 1956-1 C.B. 816; 56-384, 1956-2 C.B. 1053; 56-628, 1956-2 C.B. 1055; 56-629, 1956-2 C.B. 1056; 56-646, 1956-2 C.B. 1057; 56-647, 1956-2 C.B. 1056; 56-650, 1956-2 C.B. 1058; 53-121, 1958-1 C.B. 609; 58-136, 1958-1 C.B. 612; 61-78, 1961-1 C.B. 846; 62-223, 1962-2 C.B. 385; ATF Rulings 74-12, 1974 ATF C.B. 51; 76-23, 1976 ATF C.B. 79; 77-4, 1977 ATF C.B. 161; 77-17, 1977 ATF C.B. 153; 79-10, 1979-2 ATF Quarterly Bulletin 3.

DRAFTING INFORMATION

The principal author of this document is Charles N. Bacon, Bureau of Alcohol, Tobacco and Firearms. However, other personnel of ATF and the Treasury Department participated in developing the document.

COMPLIANCE WITH EXECUTIVE ORDER 12044

This regulation does not meet the Department's criteria for significant regulations as set forth in the Federal Register of November 8, 1978.

AUTHORITY AND ISSUANCE

These regulations are issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

Paragraph. 1. Revise Part 6 to read as follows:

PART 6—"TIED-HOUSE"

Subpart A—Scope of Regulations

Sec.
6.1 General.
6.2 Territorial extent.
6.3 Application.
6.4 Jurisdictional limits.

Subpart B—Definitions

6.11 Meaning of terms.

Subpart C—Unlawful Inducements

Sec.
General

6.21 Application.

Interest In Retail License

6.25 General.
6.26 Indirect interest.
6.27 Proprietary interest.

Interest In Retail Property

6.31 General.
6.32 Indirect interest.
6.33 Proprietary interest.
6.34 Mortgages.
6.35 Renting display space.

Furnishing Things of Value

6.41 General.
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6.43 Sale of equipment.
6.44 Free warehousing.
6.45 Assistance in acquiring license.
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Paying for Advertising, Display or Distribution Service

6.51 General.
6.52 Cooperative advertising.
6.53 Advertising in ballparks, racetracks, and stadiums.
6.54 Advertising in retailer publications.
6.55 Display service.
6.56 Renting display space.

Guaranteeing loans

6.61 Guaranteeing loans.

Extension of Credit

6.65 General.
6.66 Calculation of period.
6.67 Sales to retailer whose account is in arrears. [Reserved]

Quota Sales

6.71 Quota sales.
6.72 "Tie-in" Sales.

Subpart D—Exceptions

6.81 General.
6.82 Cost adjustment factor.
6.83 Product displays.
6.84 Inside signs.
6.85 Retailer advertising specialties.
6.86 Wine lists.
6.87 Consumer advertising specialties.
6.88 Glassware.
6.89 Tapping accessories.
6.90 Supplies.
6.91 Samples.
6.92 Newspaper cuts.
6.93 Combination packaging.
6.94 Educational seminars.
6.95 Consumer tasting or sampling at retail establishments.
6.96 Consumer promotions.
6.97 Coil cleaning service.
6.98 Advertising service.
6.99 Stocking, rotation, and pricing service.
6.100 Participation in retailer association activities.
6.101 Merchandise.

Authority: The provisions of this Part 6 issued under 49 Stat. 981, as amended (27 U.S.C. 205).

Subpart A—Scope of Regulations

§ 6.1 General.

The regulations in this part, issued pursuant to section 5 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices which are prohibited by subsection (b), "Tiedhouse", and provide the exception to these prohibitions. This part does not attempt to enumerate all of the practices prohibited by section 5(b) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

§ 6.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 6.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members (for example, between a producer and a wholesaler), or to transactions between an industry member and a retailer wholly owned by that industry member.

(b) *Transaction involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 6.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) the industry member induces a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) if:

(i) the inducement is made in the course of interstate or foreign commerce; or

(ii) the industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) the direct effect of the inducement is to prevent, deter, hinder or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(b) of the Federal Alcohol Administration Act (27 U.S.C. 205 (b)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State, as the case may be.

Subpart B—Definitions

§ 6.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Equipment. All functional items such as tap boxes, glassware, pouring racks, and similar items used in the conduct of a retailer's business.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehousemen and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

Retailer establishment. Any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

Subpart C—Unlawful Inducements

GENERAL

§ 6.21 Application.

Except as provided in Subpart D, it is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any of the following means:

(a) by acquiring or holding (after the expiration of any license held at the time the FAA Act was enacted) any interest in any license with respect to the premises of the retailer;

(b) by acquiring any interest in the real or personal property owned, occupied, or used by the retailer in the conduct of his business;

(c) by furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in Subpart D;

(d) by paying or crediting the retailer for any advertising, display, or distribution service;

(e) by guaranteeing any loan or the repayment of any financial obligation of the retailer;

(f) by extending to the retailer credit for a period in excess of the credit period usual and customary to the industry for the particular class of transactions as prescribed in § 6.65; or

(g) by requiring the retailer to take and dispose of a certain quota of any such products.

INTEREST IN RETAIL LICENSE

§ 6.25 General.

Industry members are prohibited from inducing the purchases of a retailer by acquiring or holding any interest in any license (State, county or municipal) with respect to the premises of a retailer.

§ 6.26 Indirect interest.

Industry member interest in retail licenses includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in a retail license acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in a retail license.

§ 6.27 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not prohibited.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in a retail license within the meaning of the Act.

§ 6.31 General.

Industry members are prohibited from inducing the purchases of retailers by acquiring an interest in real or personal property owned, occupied, or used by the retailer in the conduct of the business.

§ 6.32 Indirect interest.

Industry members interest in retail property includes any interest acquired by corporate officials, partners, employees or other representatives of the industry member. Any interest in retail property acquired by a separate corporation in which the industry member or its officials, hold ownership or are otherwise affiliated, is an interest in retail property.

§ 6.33 Proprietary interest.

(a) *Complete ownership.* Outright ownership of a retail business by an industry member is not prohibited.

(b) *Partial ownership.* Less than complete ownership of a retail business by an industry member constitutes an interest in retail property within the meaning of the Act.

§ 6.34 Mortgages.

The acquisition of a mortgage on a retailer's real or personal property by an industry member constitutes an interest in the retailer's property within the meaning of the Act.

§ 6.35 Renting display space.

The renting of display space by an industry member at a retail establishment constitutes an interest in the retailer's property within the meaning of the Act.

FURNISHING THINGS OF VALUE

§ 6.41 General.

Subject to the exceptions listed in Subpart D, industry members are prohibited from inducing the purchases of a retailer by furnishing, giving, renting, lending or selling to the retailer any equipment, fixtures, signs, supplies, money, services or other thing of value.

§ 6.42 Indirect inducement through third party arrangements.

The furnishing, giving, renting, lending or selling of equipment, fixtures, signs, supplies, money, services, or other thing of value by an industry member to a third party, such as a retailer association or display company where the benefits resulting from such thing of value flow to individual retailers, is the indirect furnishing of a thing of value within the meaning of the Act. This section does not prohibit third parties from furnishing, giving, renting, lending, or selling equipment, fixtures, signs, supplies, money, services, or things of value to retailers which industry members may lawfully provide to retailers under Subpart D of this part.

§ 6.43 Sale of equipment.

A transaction in which equipment is sold to a retailer by an industry member, except as provided in §§ 6.88 and 6.89, is the selling of equipment within the meaning of the Act regardless of how sold. Further, the negotiation by an industry member of a special price to a retailer for equipment from an equipment company is the furnishing of a thing of value within the meaning of the Act.

§ 6.44 Free warehousing.

The furnishing of free warehousing by delaying delivery of distilled spirits, wine, or malt beverages beyond the time that payment for the product is received, or if a retailer is purchasing on credit, delaying final delivery of products beyond the close of the period of time for which credit is lawfully extended, is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.45 Assistance in acquiring license.

Any assistance (financial, legal, administrative or influential) given the retailer by an industry member in the retailer's acquisition of the retailer's license is the furnishing of a service or thing of value within the meaning of the Act.

§ 6.46 Outside signs.

(a) *Furnished to retailers.* The furnishing of outside signs to retailers by an industry member is the furnishing of a thing of value within the meaning of the Act.

(b) *Benefiting a retailer.* The placement by an industry member of a "billboard" or "spectacular" sign, advertising distilled spirits, wine, or malt beverages, on the wall or roof of a building adjacent to or occupied by a retailer is the furnishing of a thing of value within the meaning of the Act if (1) the sign contains a panel identifying the retailer, or (2) the retailer is compensated, directly or indirectly (through a sign company), in conjunction with the placement of the sign.

§ 6.47 Item intended for consumers.

Except as provided in §§ 6.87 and 6.93, the furnishing of things of value such as trading stamps, coupons, nonalcoholic mixers, pouring racks, and the like to retailers is the furnishing of a thing of value within the meaning of the Act regardless of whether the industry member intends for the items to be distributed free of charge to consumers.

PAYING FOR ADVERTISING, DISPLAY OR DISTRIBUTION SERVICE

§ 6.51 General.

Industry members are prohibited from inducing the purchases of a retailer by paying or crediting the retailer for any advertising, display or distribution service, whether or not the advertising, display or distribution service received is commensurate with the amount paid by the retailer.

§ 6.52 Cooperative advertising.

An arrangement in which an industry member participates with a retailer in paying for an advertisement placed by the retailer constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.53 Advertising in ballparks, racetracks, and stadiums.

The purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire constitutes paying the retailer for an advertising service within the meaning of the Act.

§ 6.54 Advertising in retailer publications.

The purchase, by an industry member, of advertising in a retailer publication for distribution to consumers or the general public constitutes paying the retailer for advertising within the meaning of the Act.

§ 6.55 Display service.

Industry member reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service within the meaning of the Act.

§ 6.56 Renting display space.

A promotion whereby an industry member rents display space at a retail establishment constitutes paying the retailer for rendering a display service within the meaning of the Act.

GUARANTEEING LOANS

§ 6.61 Guaranteeing loans.

An industry member is prohibited from inducing the purchases of a retailer by guaranteeing any loan or the repayment of any financial obligation of a retailer.

EXTENSION OF CREDIT

§ 6.65 General.

Industry members are prohibited from inducing the purchases of a retailer by the extension of credit to the retailer for a period of time in excess of 30 days from the date of delivery.

§ 6.66 Calculation of period.

For the purpose of this part, the period of credit is calculated as the time elapsing between the date of delivery of the product and the date of full legal discharge of the retailer, through the payment of cash or its equivalent, from all indebtedness arising from the transaction.

§ 6.67 Sales to retailer whose account is in arrears. [Reserved]

QUOTA SALES

§ 6.71 Quota sales.

An industry member is prohibited from inducing the purchases of a retailer by requiring a retailer to take and dispose of any quota of distilled spirits, wine, or malt beverages.

§ 6.72 "Tie-in" sales.

A requirement that a retailer purchase one product in order to purchase another is prohibited. This includes combination sales if one or more products may be purchased only in combination with other products and not individually. However, an industry member is not prohibited from selling at a special combination price, two or more kinds or brands of products to a retailer, provided (a) the retailer has the option of purchasing either product at the usual price, and (b) the retailer is not required to purchase any product he or she does not want.

Subpart D—Exceptions

§ 6.81 General.

(a) *Application.* An industry member may furnish a retailer equipment, inside signs, supplies, services, or other thing of value, under the conditions and within the limitations prescribed by this subpart. The furnishing of these items or services may not be conditioned on the purchase of distilled spirits, wine or malt beverages.

(b) *Recordkeeping requirements.* Industry members shall keep and maintain records on the permit premises, for a three-year period, of all items furnished to retailers under §§ 6.83, 6.85, 6.88, 6.89, 6.90, 6.91, 6.96(a), and 6.100. Commercial records or invoices may be used to satisfy this recordkeeping requirement if all required information is shown. These records shall show:

(1) the name and address of the retailer receiving the item;

(2) the date furnished;

(3) the item furnished;

(4) the industry member's cost of the item furnished (determined by manufacturer's invoice price); and

(5) charges to the retailer for any item.

§ 6.82 Cost adjustment factor.

(a) *General.* A "cost adjustment factor" will be used to periodically update the dollar limitations prescribed in this subpart. The Director, Bureau of Alcohol, Tobacco and Firearms, shall establish the adjusted dollar limitation on an annual basis beginning in January 1981.

(b) *Definition.* "Cost adjustment factor" is a percentage equal to the change in the Bureau of Labor Statistics consumer price index.

§ 6.83 Product displays.

(a) *General.* An industry member may furnish, give, rent, loan, or sell product displays to a retailer, subject to the limitations prescribed in paragraph (c) of this section.

(b) *Definition.* Product display means any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, or malt beverages are displayed and sold.

(c) *Conditions and limitations.*

(1) The total value of all product displays furnished by an industry member under paragraph (a) of this section may not exceed $100 per brand in use at any one time in any one retail establishment. The value of a product display is the actual cost to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) Industry members may not pool or combine their dollar limitations in order to provide a retailer a product display valued in excess of $100 per brand.

(3) Product displays shall bear conspicuous and substantial advertising matter.

§ 6.34 Inside signs.

(a) *General.* An industry member may furnish, give, rent, loan, or sell to a retailer inside signs which bear advertising matter. Inside signs include such things as posters, placards, designs, mechanical devices, and window decorations.

(b) *Conditions and limitations.* Industry members may furnish inside signs to retailers under the following limitations:

(1) The inside sign shall have no secondary value and be of value to the retailer only as advertising.

(2) The inside sign shall be used only in the windows or other interior portions of the retail establishment.

(3) The industry member may not directly or indirectly pay or credit the retailer for displaying the inside sign or for any expense incidental to its operation.

§ 6.85 Retailer advertising specialties.

(a) *General.* An industry member may furnish, give, rent, loan, or sell retailer advertising specialties to a retailer if these items bear advertising matter and are primarily valuable to the retailer as point of sale advertising. These items include such things as trays, coasters, mats, menu cards, meal checks, paper napkins, foam scrapers, back bar mats, thermometers, clocks, and calendars. An industry member may add the name or name and address of the retailer to the retail advertising specialty.

(b) *Limitations.*

(1) The total value of all retailer advertising specialties furnished by an industry member to a retailer may not exceed $50 per brand in any one calendar year per retail establishment. The value of a retailer advertising specialty is the actual cost of that item to the industry member who initially purchased it. Transportation and installation costs are excluded.

(2) Industry members may not pool or combine their dollar limitations in order to provide a retailer with retailer advertising specialties valued in excess of $50 per brand.

§ 6.86 Wine lists.

An industry member may furnish, give, rent, loan, or sell wine lists or wine menus to retailers.

§ 6.87 Consumer advertising specialties.

Consumer advertising specialties, such as ash trays, bottle or can openers, cork screws, shopping bags, matches, printed recipes, pamphlets, cards, leaflets, blotters, post cards, and pencils, which bear advertising matter may be furnished, given, or sold to a retailer for unconditional distribution by the retailer to the general public. The retailer may not be paid or credited in any manner directly or indirectly for this distribution service.

§ 6.88 Glassware.

An industry member may sell glassware to a retailer if the glassware is sold at a price not less than the cost to the industry member who initially purchased it, and if the price is collected within 30 days of the date of sale.

§ 6.89 Tapping accessories.

Tapping accessories, such as standards, faucets, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, and check valves, may be sold to a retailer and installed in the retailer's establishment if the tapping accessories are sold at a price not less than the cost to the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

§ 6.90 Supplies.

Carbon dioxide gas or ice may be sold to a retailer, if sold in accordance with the reasonable open market price in the locality where sold, and if the price is collected within 30 days of the date of sale.

§ 6.91 Samples.

An industry member may furnish or give a sample of distilled spirits, wine, or malt beverages to a retailer who has not previously purchased the brand from that industry member. For each retail establishment, the industry member may give not more than 3 gallons of any brand of malt beverage, not more than 500 milliliters of any brand of distilled spirits, and not more than 3 liters of any brand of wine. If the retailer is an agency of a State or a political subdivision of a State, the industry member may furnish not more than 2 liters of any brand of distilled spirits. If a particular product is not available in a size within the quantity limitations of this section, an industry member may furnish to a retailer the next largest size.

§ 6.92 Newspaper cuts.

Newspaper cuts, mats, or engraved blocks for use in retailers' advertisements may be furnished, given, rented, loaned, or sold by an industry member to a retailer selling the industry member's products.

§ 6.93 Combination packaging.

An industry member may package and distribute distilled spirits, wine, or malt beverages in combination with other items provided that:

(a) The items have no value or benefit to the retailer other than that of having the potential of attracting purchasers and thereby promoting sales;

(b) The package (product plus non-alcoholic item) is designed to be delivered intact to the consumer; and

(c) Any additional cost incurred in creating the combination package is passed on to the retailer.

§ 6.94 Educational seminars.

An industry member may give or sponsor educational seminars for employees of retailers either at the industry member's premises or at the retail establishment. Examples would be seminars dealing with use of a retailer's equipment, training seminars for employees of retailers, or tours of industry member's plant premises. This section does not authorize an industry member to pay a retailer's expense in conjunction with an educational seminar.

§ 6.95 Consumer tasting or sampling at retail establishments.

An industry member may conduct tasting or sampling activities at a retail establishment. The industry member may purchase the products to be used from the retailer, but may not purchase them from the retailer for more than the ordinary retail price.

§ 6.96 Consumer promotions.

(a) *Coupons.* An industry member may furnish to consumers, coupons which are redeemable at a retail establishment under the following conditions:

(1) The coupons may not specify a particular retailer or group of retailers where such coupons can be redeemed.

(2) An industry member may reimburse a retailer for the face value of all coupons redeemed, and pay a retailer a usual and customary handling fee for the redemption of coupons.

(3) Payments for the redemption of coupons shall be made directly to the retail entity to reduce the cost of sales. An industry member may not pay officers, employees or representatives of retailers or wholesalers for the redemption of coupons.

(b) *Direct offerings.* Contest prizes, premium offers, refunds, and like items may be offered by industry members directly to consumers. Officers, employees and representatives of wholesalers or retailers are excluded from participation.

§ 6.97 Coil cleaning service.

Coil cleaning service may be furnished, given or sold to a retailer of wine or malt beverages.

§ 6.98 Advertising service.

The names and addresses of retailers selling the products of an industry member may be listed in an advertisement of that industry member, if—

(a) the advertisement does not also contain the retail price of the product, and

(b) the listing is the only reference to the retailer in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole.

Picture or illustrations of retail establishments and laudatory references to retailers in industry member advertisements are not hereby authorized.

§ 6.99 Stocking, rotation and pricing service.

Industry members may, at a retail establishment, stock, rotate and affix the price to distilled spirits, wine, or malt beverages which they sell, provided products purchased from other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store or liquor department is not hereby authorized.

§ 6.100 Participation in retailer association activities.

An industry member may participate in retailer association activities. An industry member may—

(a) display its products at a convention or trade show,

(b) rent display booth space if the rental fee is not excessive and is the same as paid by all exhibitors,

(c) provide its own hospitality which is independent from association sponsored activities,

(d) purchase tickets to functions and pay registration fees if the payments or fees are not excessive and are the same as paid by all exhibitors, and

(e) make payments for advertisements in programs or brochures issued by retailer associations at a convention or trade show if the total payments made by an industry member for all such advertisements do not exceed $100 per year for any retailer association.

§ 6.101 Merchandise.

(a) *General.* An industry member, who is also engaged in business as a bona fide vendor of other merchandise (for example, groceries or drugs) may sell that merchandise to a retailer if—

(1) the merchandise is sold at its fair market value,

(2) the merchandise is not sold in combination with distilled spirits, wines, or malt beverages, and

(3) the merchandise is itemized separately on the industry member's invoices and other records.

(b) *Things of value covered in other sections of this part.* Equipment, fixtures, signs, glassware, supplies, services, and advertising specialties may be furnished to retailers only as provided in other sections within this part.

Par. 2. Delete Part 8: Credit Period to be Extended to Retailers of Alcoholic Beverages.

Par. 3. Add new Parts 8, 10 and 11 which read as follow:

PART 8—EXCLUSIVE OUTLETS

Subpart A—Scope of Regulations

Sec.
8.1 General.
8.2 Territorial extent.
8.3 Application.
8.4 Jurisdictional limits.

Subpart B—Definitions

8.11 Meaning of terms.

Subpart C—Prohibited Practices

8.21 General.
8.22 Contracts to purchase distilled spirits, wine, or malt beverages.
8.23 Third party arrangements.

Authority: 49 Stat. 981, as amended (27 U.S.C. 205).

Subpart A—Scope of Regulations

§ 8.1 General.

The regulations in this part, issued pursuant to section 5 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices which are prohibited by subsection (a), "Exclusive outlet." This part does not attempt to enumerate all of the practices prohibited by section 5(a) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

§ 8.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 8.3 Application.

(a) *General.* This part applies only to transactions between industry members and retailers. It does not apply to transactions between two industry members; for example, between a producer and a wholesaler.

(b) *Transactions involving State agencies.* The regulations in this part apply only to transactions between industry members and State agencies operating as retailers as defined in this part. The regulations do not apply to State agencies with regard to their wholesale dealings with retailers.

§ 8.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) the industry member requires, by agreement or otherwise, a retailer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in whole or in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) if:

(i) the requirement is made in the course of interstate or foreign commerce; or

(ii) the industry member engages in the practice of using a requirement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) the direct effect of the requirement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(a) of the Federal Alcohol Administration Act (27 U.S.C. 205(a)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

Subpart B—Definitions

§ 8.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler, of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer of employee of such agency.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Retailer. Any person engaged in the sale of distilled spirits, wine or malt beverages to consumers. A wholesaler who makes incidental retail sales representing less than five percent of the wholesaler's total sales volume for the preceding two-month period shall not be considered a retailer with respect to such incidental sales.

Retail establishment. Any premises where distilled spirits, wine or malt beverages are sold or offered for sale to consumers, whether for consumption on or off the premises where sold.

Subpart C—Prohibited Practices

§ 8.21 General.

It is unlawful for an industry member to require, by agreement or otherwise, that any retailer purchase distilled spirits, wine, or malt beverages from the industry member to the exclusion, in whole or in part, of products sold or offered for sale by other persons in interstate or foreign commerce. This prohibition includes purchases coerced by industry members, through acts or threats of physical or economic harm, as well as voluntary industry member-retailer purchase agreements.

§ 8.22 Contracts to purchase distilled spirits, wine, or malt beverages.

Any contract or agreement, written or unwritten, which has the effect of requiring the retailer to purchase distilled spirits, wine, or malt beverages from the industry member beyond a single sales transaction is prohibited. Examples of such contracts are:

(a) An advertising contract between an industry member and a retailer with the express or implied requirement of the purchase of the advertiser's products; or

(b) A sales contract awarded on a competitive bid basis which has the effect of prohibiting the retailer from purchasing from other industry members by:

(1) requiring that for the period of the agreement, the retailer purchase a product or line of products exclusively from the industry member; or

(2) requiring that the retailer purchase a specific or minimum quantity during the period of the agreement.

§ 8.23 Third party arrangements.

Industry member arrangements with non-retailers which result in a retailer being required to purchase the industry member's products are prohibited. For example, a supplier enters into a contractual agreement or other arrangement with a third party. The third party, a ballclub, or municipal or private corporation, not acting as a retailer, leases the concession rights but is able to control the purchasing decisions of the retailer. The business arrangements entered into, between the industry member and the third party, may consist of such things as sponsoring radio or television broadcasting, paying for advertising, or providing other services or things of value. The third party, in consideration of the above, requires the retailer to purchase the industry member's products either exclusively or on a specified percentage basis.

PART 10—COMMERCIAL BRIBERY

Subpart A—Scope of Regulations

Sec.
10.1 General.
10.2 Territorial extent.
10.3 Application.
10.4 Jurisdictional limits.

Subpart B—Definitions

10.11 Meaning of terms.

Subpart C—Commercial Bribery

10.21 Commercial bribery.
10.22 Employee associations.
10.23 Gifts or payments to wholesalers.
10.24 Sales promotion contests.

Authority: 49 Stat. 981, as amended (27 U.S.C. 205).

Subpart A—Scope of Regulations

§ 10.1 General.

The regulations in this part, issued pursuant to section 5 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify practices which are prohibited by subsection (c), "Commercial bribery." This part does not attempt to enumerate all of the practices prohibited by section 5(c) of the Act. Nothing in this part shall exempt any person from the requirements of any State law or regulation.

§ 10.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 10.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and employees, officers, or representatives of trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply only to transactions between industry members and employees of State agencies operating as retailers, wholesalers, or both. The regulations do not apply to State agencies with regard to their dealings with employees, officers, or representatives of trade buyers.

§ 10.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) the industry member induces a trade buyer to purchase distilled spirits, wine, or malt beverages from such industry member to the exclusion in part of products sold or offered for sale by other persons in interstate or foreign commerce; and

(2) if:

(i) the inducement is made in the course of interstate or foreign commerce; or

(ii) the industry member engages in the practice of using an inducement to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) the direct effect of the inducement is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such retailer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between an employee, officer, or representative of a trade buyer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(c) of the Federal Alcohol Administration Act (27 U.S.C. 205(c)), with respect to similar transactions between an employee, officer, or representative of a trade buyer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

Subpart B—Definitions

§ 10.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler, or warehouseman and bottler, of distilled spirits; industry member does not include an agency of a State or political subdivision thereof, or an officer or employee of such agency.

Officer. All corporate executives, including presidents, vice presidents, treasurers, and chief executive officers.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine, or malt beverages.

Subpart C—Commercial Bribery

§ 10.21 Commercial bribery.

It is unlawful for an industry member, directly or indirectly or through an affiliate, to induce a trade buyer to purchase the industry member's products, to the complete or partial exclusion of products sold or offered for sale by other persons in interstate or foreign commerce, by offering or giving a bonus, premium, compensation, or other thing of value to any officer, employee, or representative of the trade buyer. The bonus, premium compensation, or other thing of value need not be offered or given for the purpose of directly inducing a trade buyer to purchase from the seller, but rather is applicable if an industry member induces officers, employees or representatives of the trade buyer to promote sales of the industry member's products and thereby indirectly induces the trade buyer to purchase from the industry member.

§ 10.22 Employee associations.

Gifts, donations, and other payments such as for advertising in publications, by an industry member, to trade buyer employee associations are considered the same as bonuses, premiums, compensation, or other things of value given directly to the employees, since the benefits resulting from the gifts or payments flow to the individual members of the association.

§ 10.23 Gifts or payments to wholesalers.

Although industry members are not prohibited from offering or giving money or other things of value to a wholesale entity (i.e., the corporation, partnership, or individual who owns the business), the wholesaler will be considered as acting as a mere conduit between its officers, employees, or representatives and the industry member, if—

(a) there is an agreement or understanding, implied or explicit, that the money or thing of value will be passed on to the officers, employees, or representatives, or

(b) it is obvious by the very nature of the item given (such as a free trip) that a pass through to the officers, employees, or representatives is clearly contemplated, or

(c) the records of the recipient wholesaler do not accurately reflect such money or item as an asset or the wholesale entity, thus being subject to all ensuing tax consequences as distinguished from the receipt of the money or item as a personal asset of an officer, employee, or representative.

§ 10.24 Sales promotion contests.

Sales contests sponsored by an industry member which offer prizes directly or indirectly to trade buyer officers, employees or representatives are inducements within the meaning of the Act.

PART 11—CONSIGNMENT SALES

Subpart A—Scope of Regulations

Sec.
11.1 General.
11.2 Territorial extent.
11.3 Application.
11.4 Jurisdictional limits.

Subpart B—Definitions

11.11 Meaning of terms.

Subpart C—Unlawful Sales Arrangements

11.21 General.
11.22 Consignment sales.
11.23 Sales conditioned on the acquisition of other products.

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

Sec.
11.31 General.

Exchanges and Returns for Ordinary and Usual Commercial Reasons

11.32 Defective products.
11.33 Error in products delivered.
11.34 Products which may no longer be lawfully sold.
11.35 Termination of business.
11.36 Termination of franchise.
11.37 Change in product.
11.38 Discontinued products.
11.39 Seasonal dealers.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

11.45 Overstocked and slow-moving products.
11.46 Seasonal products.

Authority: 49 Stat. 981, as amended (27 U.S.C. 205).

Subpart A—Scope of Regulations

§ 11.1 General.

The regulations in this part, issued pursuant to section 5 of the Federal Alcohol Administration Act (27 U.S.C. 205), specify sales arrangements prohibited by subsection (d), "Consignment sales" and contain guidelines concerning the return of distilled spirits, wine, and malt beverages from a trade buyer. This part does not attempt to enumerate all of the sales arrangements prohibited by section 5(d) of the Act. Nothing in this part shall operate to exempt any person from the requirements of any State law or regulation.

§ 11.2 Territorial extent.

This part applies to the several States of the United States, the District of Columbia, and Puerto Rico.

§ 11.3 Application.

(a) *General.* The regulations in this part apply to transactions between industry members and trade buyers.

(b) *Transactions involving State agencies.* The regulations in this part apply to transactions involving State agencies operating as retailers or wholesalers.

§ 11.4 Jurisdictional limits.

(a) *General.* The regulations in this part apply where:

(1) the industry member sells, offers for sale, or contracts to sell to a trade buyer engaged in the sale of distilled spirits, wines, or malt beverages, or for any such trade buyer to purchase, offer to purchase, or contract to purchase, any such products on consignment or under conditional sale or with the privilege of return or on any basis other than a bona fide sale, or where any part of such transaction involves, directly or indirectly, the acquisition by such person from the trade buyer or the agreement to acquire from the trade buyer other distilled spirits, wine, or malt beverages; and,

(2) if:

(i) the sale, purchase, offer or contract is made in the course of interstate or foreign commerce; or

(ii) the industry member engages in using the practice to such an extent as substantially to restrain or prevent transactions in interstate or foreign commerce in any such products; or

(iii) the direct effect of the sale, purchase, offer or contract is to prevent, deter, hinder, or restrict other persons from selling or offering for sale any such products to such trade buyer in interstate or foreign commerce.

(b) *Malt beverages.* In the case of malt beverages, this part applies to transactions between a retailer in any State and a brewer, importer, or wholesaler of malt beverages inside or outside such State only to the extent that the law of such State imposes requirements similar to the requirements of section 5(d) of the Federal Alcohol Administration Act (27 U.S.C. 205 (d)), with respect to similar transactions between a retailer in such State and a brewer, importer, or wholesaler of malt beverages in such State.

Subpart B—Definitions

§ 11.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Any other term defined in the Federal Alcohol Administration Act and used in this part shall have the meaning assigned to it by that Act.

Act. The Federal Alcohol Administration Act.

Exchange. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to an industry member with other products taken as a replacement.

Industry member. Any person engaged in business as a distiller, brewer, rectifier, blender, or other producer, or as an importer or wholesaler of distilled spirits, wine or malt beverages, or as a bottler or warehouseman and bottler, of distilled spirits.

Product. Distilled spirits, wine or malt beverages, as defined in the Federal Alcohol Administration Act.

Return. The transfer of distilled spirits, wine, or malt beverages from a trade buyer to the industry member from whom purchased, for cash or credit.

Trade buyer. Any person who is a wholesaler or retailer of distilled spirits, wine or malt beverages.

Subpart C—Unlawful Sales Arrangements

§ 11.21 General.

It is unlawful for an industry member to sell, offer for sale, or contract to sell to any trade buyer, or for any such trade buyer to purchase, offer to purchase, or contract to purchase any products (a) on consignment; or (b) under conditional sale; or (c) with the privilege of return; or (d) on any basis other than a bona fide sale; or (e) if any part of the sale involves, directly or indirectly, the acquisition by such person of other products from the trade buyer or the agreement to acquire other products from the trade buyer. Transactions involving the bona fide return of products for ordinary and usual commercial reasons arising after the product has been sold are not prohibited.

§ 11.22 Consignment sales.

Consignment sales are arrangements wherein the trade buyer is under no obligation to pay for distilled spirits, wine, or malt beverages until they are sold by the trade buyer.

§ 11.23 Sales conditioned on the acquisition of other products.

(a) *General.* A sale in which any part of the sale involves, directly or indirectly, the acquisition by the industry member from the trade buyer, or the agreement, as a condition to present or future sales, to accept other products from the trade buyer is prohibited.

(b) *Exchange*. The exchange of one product for another is prohibited as a sales transaction conditioned on the acquisition of other products. However, the exchange of a product for equal quantities (case for case) of the same type and brand of product, in containers of another size is not considered an acquisition of "other" products and is not prohibited if there was no direct or implied privilege of return extended when the product was originally sold. Industry members may make price adjustments on products eligible for exchange under this paragraph.

Subpart D—Rules for the Return of Distilled Spirits, Wine, and Malt Beverages

§ 11.31 General.

(a) Section 5(d) of the Act provides, in part, that it is unlawful to sell, offer to sell, or contract to sell products with the privilege of return for any reason, other than those considered to be "ordinary and usual commercial reasons" arising after the product has been sold. Sections 11.32 through 11.39 specify what are considered "ordinary and usual commercial reasons" for the return of products, and outline the conditions and limitations for such returns.

(b) An industry member is under no obligation to accept the return of products for the reasons listed in §§ 11.32-11.39.

EXCHANGES AND RETURNS FOR ORDINARY AND USUAL COMMERCIAL REASONS

§ 11.32 Defective products.

Products which are unmarketable because of product deterioration, leaking containers, damaged labels, or mutilated and missing strip stamps may be exchanged for an equal quantity of identical products.

§ 11.33 Error in products delivered.

Any discrepancy between products ordered and products delivered may be corrected, within a reasonable period after delivery, by exchange of the products delivered for those which were ordered, or by a return for cash or credit against outstanding indebtedness.

§ 11.34 Products which may no longer be lawfully sold.

Products which may no longer be lawfully sold may be returned for cash or credit against outstanding indebtedness. This would include situations where, due to a change in law or regulation, a particular size or brand is no longer permitted to be sold.

§ 11.35 Termination of business.

Products on hand at the time a trade buyer terminates operations may be returned for cash or credit against outstanding indebtedness. This does not include a temporary seasonal shutdown (see § 11.40).

§ 11.36 Termination of franchise.

When an industry member has sold products for cash or credit to one of its wholesalers and the distributorship arrangement is subsequently terminated, stocks of the product on hand may be returned for cash or credit against outstanding indebtedness.

§ 11.37 Change in product.

A trade buyer's inventory of a product which has been changed in formula, proof, label or container (subject to § 11.46) may be exchanged for equal quantities of the new version of that product.

§ 11.38 Discontinued products.

When a producer or importer discontinues the production or importation of a product, a trade buyer's inventory of that product may be returned for cash or credit against outstanding indebtedness.

§ 11.39 Seasonal dealers.

Industry members may accept the return of products from retail dealers who are only open a portion of the year, if the products are likely to spoil during the off season. These returns will be for cash or for credit against outstanding indebtedness.

Exchanges and Returns for Reasons Not Considered Ordinary and Usual

§ 11.45 Overstocked and slow-moving products.

The return or exchange of a product because it is overstocked or slow-moving does not constitute a return for "ordinary and usual commercial reasons."

§ 11.46 Seasonal products.

The return or exchange of products for which there is only a limited or seasonal demand, such as holiday decanters and certain distinctive bottles, does not constitute a return for "ordinary and usual commercial reasons."

Signed: September 15, 1980.

G. R. Dickerson,
Director.

Approved: September 15, 1980.

Richard J. Davis,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on September 19, 1980, 8:45 a.m., and published in the Federal Register for September 23, 1980, 45 F.R. 62342)

TITLE 27—ALCOHOL TOBACCO PRODUCTS AND FIREARMS—CHAPTER I—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

T.D. ATF-75

27 CFR Part 19

Alternate Curtailment and Extension of Bonded Premises for Use as General Premises

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

SUMMARY: This temporary rule relates to the Distilled Spirits Tax Revision Act of 1979, Subtitle A of Title VIII of the Trade Agreements Act of 1979 (Pub. L. 96-39). This temporary rule provides a method of alternation between general and bonded distilled spirits plant premises.

EFFECTIVE DATE: The effective date of these temporary regulations is October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Edward J. Sheehan, E. J. Ference, or John V. Jarowski, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this temporary rule to revise 27 CFR 19.190 and 19.193 and add a new section, 27 CFR 19.205, to provide a method of curtailing the bonded premises of a distilled spirits plant for use as general premises. Sections 19.190 and 19.193 were published in their entirety in the Federal Register (44 FR 71612) as both a temporary rule, T.D. ATF-62, and a notice of proposed rulemaking for final regulations, Notice No. 329. The temporary regulations as revised and added by this document will remain in effect until superseded by final regulations. In addition, Notice No. 329, a notice of proposed rulemaking for final regulations providing for submission of written comments, applies to these revised temporary regulations.

NEW PROVISION

The purpose of these regulations is to provide proprietors with additional operational flexibility. Proprietors will be able to curtail and extend their bonded premises to permit the use of the processing premises and equipment for both bonded (bonded premises) and taxpaid (general premises) operations. These regulations provide an expeditious and practical method for accomplishing such curtailment and extension of distilled spirits plant premises.

DRAFTING INFORMATION

The principal authors of this document are E. J. Sheehan, E. J. Ference and J. V. Jarowski of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Treasury Department participated in developing this document, both on matters of substance and style.

EFFECTIVE DATE

Issuance of this Treasury decision as a temporary rule with notice and public procedure under 5 U.S.C. 553(b) and in compliance with the effective date limitation in 5 U.S.C. 553(d) is impracticable and not in the public interest. The omission from 27 CFR Part 19 of a provision for extension and curtailment of the bonded premises of a distilled spirits plant for use as general premises has created operational difficulties for proprietors desiring to store taxpaid case goods. In addition, the omission of this provision has created the potential for hardships and financial inequities for manufacturers of nonbeverage products who qualify their premises as distilled spirits plants. Those manufacturers cannot expeditiously extend their premises to permit bonded operations when needed, and then curtail the bonded premises to permit routine taxpaid manufacturing operations.

Accordingly, this Treasury decision becomes effective on October 23, 1980.

AUTHORITY AND ISSUANCE

These regulations are issued under the authority contained in 26 U.S.C. 7805 (68A Stat. 917, as amended).

Accordingly, Title 27 Code of Federal Regulations is amended as follows:

PART 19—DISTILLED SPIRITS PLANTS

Par. 1. The table of sections for Part 19 is amended to reflect the addition of § 19.205. As amended, the table of sections reads as follows:

* * * * *

Subpart G—Qualification of Distilled Spirits Plants

* * * * *

Sec.
19.205 Alternate curtailment and extension of bonded premises for use as general premises.

* * * * *

Par. 2 Section 19.190 is amended to include a reference to new § 19.205. As amended, § 19.190 reads as follows:

§ 19.190 Changes in premises.

Except as provided in §§ 19.202, 19.203, 19.204, and 19.205, where bonded premises, or any other premises included as a part of the plant are to be extended or curtailed, the proprietor shall file (a) an application for registration, Form 5110.41, to cover such extension and curtailment, and (b) amended plans. Premises and equipment to be included by extension or to be excluded by curtailment shall not, prior to approval by the regional regulatory administrator of the required documents, be used for other than previously approved purposes.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended (26 U.S.C. 5172))

§ 19.193 [Amended]

Par. 3. Section 19.193 is amended to add a reference to new § 19.205. In the first sentence of § 19.193, the words "or 19.204" are replaced with the words "19.204, or 19.205."

Par. 4. Section 19.205 is added immediately following § 19.204. As added, § 19.205 reads as follows:

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

(a) *General.* The premises of a distilled spirits plant may, as provided in this section, be alternately curtailed and extended to permit the bonded premises of the distilled spirits plant to be used temporarily as general premises, or to permit the general premises of a distilled spirits plant to be used temporarily as bonded premises.

(b) *Proprietor's responsibility.* When a portion of the distilled spirits plant premises is first to be curtailed or extended as provided in this section, the proprietor shall file with the regional regulatory administrator (1) an application for registration, Form 5110.41, to cover alternate extension and curtailment of the premises, (2) a special plan delineating the premises as they will exist, both during extension and curtailment, and (3) a special diagram, in duplicate, clearly depicting all buildings, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence. Once such qualifying documents have been approved by the regional regulatory administrator, the designated premises and equipment may be alternately curtailed or extended pursuant to notice on Form 5110.34. Portions of the premises to be excluded by curtailment or included by extension shall not be used for purposes other than as set forth in the current notice. The proprietor shall remove all spirits (including denatured spirits), articles, and wines from the premises or equipment affected by the notice prior to the effective date and hour of the notice, except that (1) bonded spirits on portions of bonded premises that are to be curtailed to general premises need not be removed if the spirits are taxpaid concurrent with the filing of Form 5110.34 to effect curtailment; and (2) taxpaid spirits on portions of general premises to be curtailed to bonded premises need not be removed if the spirits are to be immediately dumped and returned to bond under the provisions of Subpart U of this part.

(c) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner satisfactory to the regional regulatory administrator.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Signed: August 26, 1980.

G. R. Dickerson,
Director.

Approved: October 9, 1980.

Richard J. Davis,
Assistant Secretary (Enforcement and Operations).

(Filed by the Office of the Federal Register on October 22, 1980, 8:45 a.m., and published in the Federal Register for October 23, 1980, 45 F.R. 70251)

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Bureau Rulings PART II

Subpart A—Alcohol

27 CFR 240.130: ACTIVITY ON BONDED WINE CELLAR PREMISES

(Also 240.134, 240.740 and 240.746)

The proprietor of a bonded wine cellar may host on his bonded premises special events at which wine and food are to be served provided the proprietor serves only tax-free wine, maintains records in sufficient detail to document the types and quantities of tax-free wine served, and receives no reimbursement for the food, the wine, or the use of the bonded premises.

ATF Rul. 80-19

The Bureau of Alcohol, Tobacco and Firearms issues this ruling to state its position concerning the use of bonded wine cellar premises for hosting occasional special events such as dinners, luncheons, and similar group functions at which wine and food are served.

The Bureau has received requests from proprietors of bonded wine cellars for permission to utilize selected portions of their bonded premises as sites for dinners, luncheons, and similar special events. On these occasions, wine is served to create goodwill and/or to introduce a new product. Although the event could be held in an off-bond area of the general winery premises, a portion of the bonded premises is selected so that the guests may enjoy the novelty and ambience of a bonded wine cellar.

In most instances, the Bureau has approved a winemaker's application and has permitted the proprietor to serve wine, free of tax, at the special event. The Bureau has evaluated its position concerning these events and issues this ruling to facilitate the hosting of special events by proprietors of bonded wine cellars.

In addition to the operations specifically described in Section 5351 of the Internal Revenue Code, Section 5361 authorizes such other operations as may be conducted in a manner that will not jeopardize the revenue or conflict with wine operations. The implementing regulation, 27 CFR 240.134, authorizes the Director to make a finding that other operations not specifically provided for in the provisions of Part 240, may be conducted in a manner that will not jeopardize the revenue, conflict with wine operations or be contrary to the law.

The Director has found that the holding of an occasional special event, such as a dinner, luncheon, or similar group function, on the bonded premises of a bonded wine cellar at which wine and food are served, is an operation which is not contrary to law and may be conducted on bonded premises in a manner that will not jeopardize the revenue or conflict with wine operations provided the proprietor serves only tax-free wine, maintains records to document the types and quantities of wines used for such purposes, and receives no reimbursement for the food, wine, or use of the bonded premises for the special event. (Under the provisions of 26 U.S.C. 5351, 5361, and 27

CFR 240.130, taxpaid wine may not be served on bonded winery premises.)

Accordingly, it is *held* that, upon the receipt of an application filed pursuant to 27 CFR 240.134, the ATF regional regulatory administrator may grant the proprietor continuing authority to conduct occasional special events on bonded wine cellar premises on the conditions that the proprietor serve only tax-free wine, maintain records of the types and quantities of wines used for such purposes, and receive no reimbursement for the food, wine, or use of the bonded premises for these special events.

In addition, Section 5372 specifically states that wine may be utilized in any bonded wine cellar for testing, tasting, or sampling, free of tax. The serving of wine, free of tax, at such a luncheon, dinner, or other special event, on bonded winery premises, may be considered as a bona fide use of wine within the scope of the tax-free testing, tasting, and sampling provisions of 26 U.S.C. 5372.

Accordingly, it is further *held*, pursuant to 26 U.S.C. 5372, that a proprietor may serve wine, free of tax, on the bonded premises of a bonded wine cellar on the occasion of such special events.

27 CFR 240.134: OTHER OPERATIONS

Conditions under which a bonded wine cellar proprietor may host on his bonded premises special events at which tax-free wine is to be served. See ATF Rul. 80-19, above.

27 CFR 240.740: GENERAL

Conditions under which a bonded wine cellar proprietor may host on his bonded premises special events at which tax-free wine is to be served. See ATF Rul. 80-19, above.

27 CFR 240.746: SAMPLES FOR TASTING AND TESTING ON BONDED WINE CELLAR PREMISES

Conditions under which a bonded wine cellar proprietor may host on his bonded premises special events at which tax-free wine is to be served. See ATF Rul. 80-19, above.

Subpart C—FIREARMS

27 CFR 178.11: MEANING OF TERMS

(Also 27 CFR 179.11)

A hand-held device with a hand grip bent at an angle to the bore and having a rifled bore which is designed to expel, by means of an explosive, two electrical contacts (barbs) connected by two wires to a high voltage source within the device is classified as a firearm. ATF Rul. 76-6 is amplified.

ATF Rul. 80-20

The Bureau has been asked to classify a device known as the Taser Model TF76 and Model TF76A. Generally, the Taser can be described as a hand-held device designed to expel, by means of an explosive, two electrical contacts (barbs) which are connected by two wires to a high voltage source in the device.

The Bureau has determined in ATF Rul. 76-6 that the Taser Model TF1 was a firearm as that term is defined in Title 18, United States Code (U.S.C.), Section 921(a)(3) and that the Model TF1 also met the "any other weapon" definition found in the National Firearms Act (NFA), Title 26, U.S.C., Section 5845(e). This ruling was limited in its application to Taser Models TF1 produced on or after May 1, 1976. The Taser Models TF76 and TF76A were subsequently developed and differ from the Taser Model TF1 in that these models each have a hand grip bent at an angle to the bore and the bore of each is rifled.

The changes in the design of the Taser Models TF76 and TF76A bring them within the exclusion found in the "any other weapon" definition of the NFA for pistols and revolvers having a rifled bore, or rifled bores.

Held, the Taser Models TF76 and TF76A are not subject to the provisions of the NFA. However, they are firearms as defined in Title 18, U.S.C., Section 921(a)(3) and are subject to the provisions of Title 18, U.S.C., Chapter 44 and Title 27, Code of Federal Regulations, Part 178.

ATF Rul. 76-6, ATF C.B. 1976, 96, is hereby amplified.

27 CFR 178.11: MEANING OF TERMS

An out-of-State college student may establish residence in a State by residing and maintaining a home in a college dormitory or in a location off-campus during the school term.

ATF Rul. 80-21

The Bureau has been asked to determine the State of residence of out-of-State college students for purposes of the Gun Control Act of 1968. "State of residence" is defined by regulation in 27 CFR 178.11 as the State in which an individual regularly resides or maintains a home. The regulation also provides an example of an individual who maintains a home in State X and a home in State Y. The individual regularly resides in State X except for the summer months and in State Y for the summer months of the year. The regulation states that during the time the individual actually resides in State X he is a resident of State X, and during the time he actually resides in State Y he is a resident of State Y.

Applying the above example to out-of-State college students it is *held,* that during the time the students actually reside in a college dormitory or at an off-campus location they are considered residents of the State where the dormitory or off-campus home is located. During the time out-of-State college students actually reside in their home State they are considered residents of their home State.

27 CFR 179.11: MEANING OF TERMS

Taser Models TF76 and TF76A are not subject to the provisions of the NFA. See ATF Rul. 80-20, page 24.

Subpart D—EXPLOSIVES

27 CFR 181.54: MOVEMENT OF APPROVED MAGAZINES

Previously approved mobile magazines may be moved and acquired without additional approval.

ATF Rul. 80-22

The Bureau of Alcohol, Tobacco and Firearms has been asked to determine whether licensees and permittees must obtain approval to move or acquire previously approved magazines when such magazines are purchased, leased, or borrowed.

Section 181.54(b) of Title 27, CFR provides that a licensee or permittee who intends to change the location of an approved storage magazine must obtain approval from ATF prior to doing so. However, the regulation excepts portable magazines from this requirement. Section 181.54(c) provides that a licensee or permittee who intends to make additions to approved storage facilities must obtain an amended license or permit prior to making such additions. The intent of this section was to insure that only magazines which meet storage standards as specified in the regulations will be used by licensees and permittees for storage of explosives.

Held, the Bureau has determined that the exception regarding portable magazines in Section 181.54(b) includes mobile magazines. Therefore, a licensee or permittee will not be required to obtain ATF approval in order to move the location of a previously approved mobile magazine; provided, that the mobile magazine is approved and permanently marked in accordance with procedures implemented as a result of this Ruling. Letterhead requests for approval of mobile magazines will be submitted to the regional regulatory administrator of the region in which magazines are located.

It is further *held* that a licensee or permittee acquiring additional magazines by purchasing, leasing, or borrowing magazines which have been previously approved by ATF need not obtain additional approval before using such magazines for the storage of explosive materials.

See ATF Procedure 80-7 for the guidelines on how to obtain ATF approval of mobile magazines to be used for the storage of explosive materials.

27 CFR 181.181: GENERAL

Certain electrical lighting meeting National Electrical Code criteria in accordance with the nature of stored explosives materials is authorized for explosives storage magazines. See ATF Rul. 80-23, below.

27 CFR 181.197: LIGHTING

(Also 181.181)

Explosives licensees wanting to use electrical lighting in magazines may do so if it meets specific design criteria in accordance with the nature of the explosives materials to be stored.

ATF Rul. 80-23

The Bureau has been asked to determine whether interior electrical lighting could be used in explosives magazines in lieu of battery-activated safety lanterns currently prescribed at 27 CFR 181.197.

Regulations in 27 CFR 181.181 provide for alternate construction for explosives storage magazines when it is shown that the alternate magazine construction is substantially equivalent to the standards of safety and security contained in Subpart H of 27 CFR Part 181.

The restrictions imposed (use of battery-activated safety lights or lanterns only) in explosives storage magazines have made it increasingly difficult to account for, and to accurately provide, the essential identifying information needed to meet the various Federal, State, and company requirements relating to regulatory and inventory control.

The Bureau recognizes these problems, and sees that the National Electrical Code contains the design parameters needed to provide safe, electrical lighting in explosives storage magazines, Types 1, 2, 3, and 4. A current copy of the National Electrical Code may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

A. Packaged, finished explosives.

Held, that "dust-ignition-proof" lighting may be used in those explosives magazines containing only packaged, finished explosives, provided, that: (1) loose essential ingredients (raw explosive materials) will at no time be stored in magazines equipped with this type of lighting, (2) all installations shall be made in strict conformance with the design parameters contained in the current version of the National Electrical Code available at the time of installation, and (3) the regional regulatory administrator of the region in which the magazine is located shall be notified of the new lighting after its installation has been completed.

B. Loose ingredients; raw explosive material.

Held, that "explosion-proof" lighting may be used in those explosives magazines which contain, at any time, loose ingredients, raw explosive materials, and/or any substance which emits flammable gases or vapors, provided, that A (2) and (3), above, shall be followed.

The alternate, electrical lighting is being allowed because it has been determined to be substantially equivalent to that prescribed in 27 CFR 181.197.

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Bureau Procedures PART III

Subpart A—ALCOHOL

26 CFR 601.301: IMPOSITION OF TAXES, QUALIFICATION REQUIREMENTS, AND REGULATIONS
(Also 19.782)

Preparation and Submission of ATF Form 5110.28, Monthly Report of Processing Operations.

ATF Proc. 80-3

Section 1. PURPOSE.

This ATF Procedure requests DSP proprietors to submit one additional Form 5110.28 (10-80 edition), Monthly Report of Processing Operations, concerning the bottling of imported spirits (including spirits brought into the United States from Puerto Rico and the Virgin Islands). This additional report will cover imported spirits bottled during the months of January through September 1980.

Sec. 2. BACKGROUND.

The Bureau has decided to compile more statistics about beverage (nonindustrial use) imported spirits bottled (including spirits brought into the United States from Puerto Rico and the Virgin Islands). Similar beverage import statistics have been previously reported by DSP proprietors before January 1980. The entries on the 1-80 edition of Form 5110.28 do not provide sufficient data for compiling import bottling statistics. To secure these statistics, a new edition (10-80) of Form 5110.28 has been made.

Sec. 3. REPORTING PROCEDURE.

DSP proprietors are requested to submit one additional Form 5110.28 (10-80 edition) with only column (c) (bottled-imported), Part IV—Processing of Beverage (Nonindustrial Use) Spirits, completed to cover the months of January through September 1980. The proprietor should identify the report on the top margin with the word "IMPORTED." All other entries for spirits on this one-time report need not be completed. Proprietors should note that column (c) for imports is reported in proof (not wine) gallons.

After processing, mixing or blending operations at a DSP, some imported spirits and some Puerto Rican or Virgin Islands spirits, may not be allowed to be labeled as a product of a foreign country, or Puerto Rican or Virgin Islands spirits, under 27 CFR Part 5. Such spirits shall be reported as bottled domestic spirits when using the 10-80 edition of Form 5110.28 and need not be reported on the one-time report of imports bottled.

DSP proprietors are requested to submit the additional Form 5110.28 (10-80 edition) not later than November 15, 1980, to report the bottled import statistics. Negative reports are not needed.

Sec. 4. DISTRIBUTION OF NEW EDITION (10-80) OF FORM 5110.28.

Each distilled spirits plant will receive an initial distribution of the new edition (10-80) of Form 5110.28 from the ATF Distribution Center. Additional copies should be ordered from the ATF Distribution Center, 3800 S. Four Mile Run Drive, Arlington, Virginia 22206.

Sec 5. INQUIRIES.

Inquiries regarding this ATF Procedure should refer to its number and be addressed to the Assistant Director (Regulatory Enforcement), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226.

27 CFR 19.782: SUBMISSION OF TRANSACTION FORMS, RECORDS, AND REPORTS

Preparation and submission of ATF Form 5110.28, Monthly Report of Processing Operations. See ATF Proc. 80-3, above.

27 CFR Part 213.171: RECORDS

(Also 213.172 and 213.173)

Tax-free alcohol permittees must maintain records in sufficient detail so that all transactions involving such alcohol may be verified. Revenue Procedure 62-10 superseded.

ATF Proc. 80-4

Section 1. PURPOSE.

The purpose of this ATF Procedure is to supply tax-free alcohol permittees with instructions and aids to assist them in the maintenance of records with respect to tax-free alcohol and to simplify the task of preparing annual reports on Form 1451 (5150.28), Report of Tax-Free Alcohol User. Most of the instructions and aids contained in this procedure originally appeared in Industry Circular No. 61-4, dated January 26, 1961, and in Revenue Procedure 62-10, C.B. 1962-1, 437 (Internal Revenue). The material originally contained in Industry Circular No. 61-4 and Revenue Procedure 62-10 is republished here in order to increase the availability of the material and to extend the conversion table which appeared in those publications so that the conversion table includes some metric equivalencies.

Sec. 2. BACKGROUND.

The Distribution and Use of Tax-Free Alcohol Regulations require that records be kept in sufficient detail to enable any internal revenue officer to verify all transactions and to ascertain that permittees have complied with the law and regulations. These regulations also require that the records be such as to enable permittees to prepare the annual report, Form 1451. Since figures reported on Form 1451 are to be in proof gallons, permittees are required to identify, on their records, the proof of all alcohol together with the actual quantities for each transaction. Regulations also require that permittees take an inventory at the close of each month and keep such inventory as a part of their records.

Sec. 3. BASIC RECORD.

.01 Alcohol Received.—The copy of the Form 1473, Shipment and Receipt Specially Denatured, Tax-Free, or Recovered Spirits, which permittees receive covering each shipment of tax-free alcohol will serve as the basic record of alcohol received. Permittees should make the proper notation on this copy (and on the original which is forwarded to the appropriate Regional Regulatory Administrator, ATF) of any losses in transit. The quantity reported on the Form 1473, minus any loss or deficiency in transit, is the quantity which must be reported on Form 1451 as "received."

.02 Use of Alcohol.—Each time alcohol is withdrawn from the permittee's supply for any use, an entry should be made on his records, showing the quantity (liquid measure), the proof, and the purpose of removal. Permittees need not convert each separate quantity so removed to proof gallons unless so desired. Instead, they may total the quantity of alcohol of the same proof removed during the period of one calendar month, and then convert the figure representing the month's removals to total proof gallons removed. The resulting total, or combined total if there is alcohol of more than one proof, will be shown in column (e) of Form 1451 for that month.

.03 Monthly Inventory.—At the close of each month, an inventory must be taken of all alcohol remaining in stock. First, the permittee must determine the quantity remaining in each package or tank. If all of the alcohol is of the same proof, he must add these figures and convert the resulting figure to proof gallons. Where there is alcohol of different proofs in stock, the permittee must add the quantity for each proof separately, convert the total quantity for each proof to proof gallons and then total the proof gallons thus obtained. This is the total quantity, in proof gallons, on hand at the end of the month.

.04 Losses or Gains.

1. After completing the above computations, the permittee will now have records showing all alcohol received and used during the month and on hand at the end of the month. (This latter, of course, also becomes the quantity on hand at the beginning of the following month to be reported in column (b) for that month.) From these figures the permittee can determine any gains or losses during the month, as follows:

2. Add the quantity received during the month to the quantity on hand at the beginning of the month, and subtract therefrom the quantities used during the month. If the resulting figure is *less* than the quantity determinated from the inventory as on hand at the end of the month, the difference between the two figures represents a gain (Example A). If it is more than the quantity revealed by the inventory, it represents a loss (Example B).

Example A:	On hand March 1, 1980	195 p.g.
	Received during month	110 p.g.
	Total	305 p.g.
	Used during month	200 p.g.
	Resulting figure	105 p.g.
	Quantity on hand, March 31 as shown by inventory	106 p.g.
	Gain during month	1 p.g.
Example B:	On hand April 1, 1980	106 p.g.
	Received during month	110 p.g.
	Total	216 p.g.
	Used during month	100 p.g.
	Losses by casualty or theft	2 p.g.*
	Resulting figure	114 p.g.
	Inventory, April 30, 1980	112 p.g.
	Additional losses during month	2 p.g.

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* The regulations require that permittees show in their records all losses by theft or casualty or other unusual losses and that entries covering these losses be made in their records at the time of such losses or when they are discovered. Therefore, these known losses must be taken into account in order to determine any additional loss at the end of the month. However, all losses must be totaled and the combined figure (in the example —4 p.g.) entered in column (h) of Form 1451.

.05 Recovered Alcohol or Alcohol Received from the General Services Administration.

1. Permittees receiving alcohol from the General Services Administration or recovering tax-free alcohol must account for such alcohol separately in their records and inventory and make separate entries on Form 1451, appropriately identified. If recovered alcohol is shipped to a distilled spirits plant for restoration, the approximate quantity thereof, in proof gallons, should be entered in column (e), followed by an asterisk, and an explanation of the entry should be shown elsewhere on the form, identifying the distilled spirits plant to which shipment was made.

2. While the above procedures do not cover every transaction, they demonstrate the type of records which can be kept to meet regulatory requirements. The records must be in sufficient detail to show each transaction and to enable permittees to prepare Form 1451. Also, a record of the inventory taken at the close of each month, along with all other records, must be maintained for a period of three years from the date of the report on Form 1451 covering the transactions. Permittees should observe the instructions on the back of Form 1451 when making entries from their records to the form.

.06 Conversion Table.

1. Use of the table below may prove helpful in converting volume measures to proof gallons for alcohol of 190 or 200 degrees of proof.

Fluid ounces	*Volume measures*	*Wine gallons*	*Proof gallons 190 proof*	*Proof gallons 200 proof*
4	¼ pint	0.031	0.059	0.062
8	½ pint	.063	.119	.125
16	1 pint	.125	.238	.250
32	1 quart	.250	.475	.500
64	½ gallon	.500	.950	1.000
96	3 quarts	.750	1.425	1.500
128	1 gallon	1.000	1.900	2.000
	2 gallons	2.000	3.800	4.000
	3 gallons	3.000	5.700	6.000
	4 gallons	4.000	7.600	8.000
	5 gallons	5.000	9.500	10.000
	10 gallons	10.000	19.000	20.000
	25 gallons	25.000	47.500	50.000
	55 gallons	55.000	104.500	110.000
Cubic Centimeters or Millimeters				
5		.001	.003	.003
10		.003	.005	.005
50		.013	.025	.026
100		.026	.050	.053
500		.132	.251	.264
1000		.264	.502	.528
5000		1.321	2.510	2.642

2. In computing proof gallons to the nearest tenth for entry to Form 1451, all fractional parts of five-hundredths or more shall be increased to the next tenth; for example, 4.275 proof gallons will be reported as 4.3

proof gallons. Fractional parts of less than five-hundredths shall be dropped; for example, 4.126 proof gallons will be reported as 4.1 proof gallons.

Sec. 4. EFFECT ON OTHER DOCUMENTS.

Revenue Procedure 62-10, C.B. 1962-1, 437 (Internal Revenue) is superseded.

Sec. 5. INQUIRIES.

Inquiries concerning this procedure should refer to it by number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

27 CFR 213.172: MONTHLY INVENTORIES

Tax-free alcohol permittees must maintain records in sufficient detail so that all transactions involving such alcohol may be verified. See ATF Proc. 80-4, above.

27 CFR 213.173: REPORTS

Tax-free alcohol permittees must maintain records in sufficient detail so that all transactions involving such alcohol may be verified. See ATF Proc. 80-4, above.

Subpart B—TOBACCO

26 CFR 601.311: IMPOSITION OF TAXES; REGULATIONS

27 CFR 290.198: PREPARATION

(Also 290.199, 290.205)

Procedures for tax exempt sales of tobacco products by proprietor of export warehouses to persons crossing the United States border into Canada or Mexico. ATF Proc. 76-1 superseded effective February 16, 1981.

ATF Proc. 80-5

Section 1. PURPOSE.

This ATF Procedure establishes guidelines which tobacco export warehouse proprietors may follow in recording sales of tobacco products to persons crossing the United States border into Canada or Mexico when individual sales to such persons do not exceed 1000 cigarettes or 1000 cigars. These guidelines become effective February 16, 1981.

Sec. 2. BACKGROUND.

Section 5704, Title 26 of the United States Code, provides that an export warehouse proprietor may remove tobacco articles, without payment of tax, for consumption beyond the jurisdiction of the internal revenue laws of the United States. Regulations in 27 CFR 290.198 require that the export warehouse proprietor prepare Form 2150, Notice of Removal of Cigars, Cigarettes, Cigarette Papers, or Cigarette Tubes, for each shipment removed from his warehouse.

Revenue Procedure 72-27 provided an alternative to this requirement by authorizing the removals to be documented on sales slips with the daily summarization of the individual sales slips on a Form 2150, when the quantities purchased by an individual for his personal use did not exceed 400 cigarettes or 100 cigars in any calendar week, or when purchases did not exceed the quantity the purchaser was legally entitled to take into the country being entered without payment of duty or tax, whichever quantity was greater. All other transactions were considered to be commercial exportations and were subject to the provisions of 27 CFR 290.198, 290.199 and 290.205.

ATF Procedure 76-1 extended the authority to use sales slips as the basic documentation for smaller commercial transactions, by providing for documentation of the individual transactions on sales slips, and the consolidation of these transactions on a Form 2150, when individual sales did not exceed 4500 cigarettes or 1000 cigars. This extension of the authorized use of sales slips to document small commercial transactions was made at the request of several export warehouse operators, who said it would greatly reduce their paperwork, and at the same time facilitate Customs' certification of the transactions.

However, since ATF Procedure 76-1 was issued, the Bureau has revised the regulations in 27 CFR Part 290 to authorize Customs to require landing certificates for exportations to contiguous countries. (T.D. ATF-52, 43 F.R. 59286, December 19, 1978). This change was made because it was found that cigarettes which were ostensibly being entered into Mexico were in fact being retained in or returned to the United States. The United States Customs Service simultaneously changed its policy to require landing certificates for commercial exportations.

In order to combat abuses of the personal-use exportation privilege, Customs published Treasury Decision 79-1 (43 F.R. 59288, December 19, 1978), setting forth this change in policy regarding those exportations. Customs determined that 5 cartons of cigarettes (1000 cigarettes) are a quantity of cigarettes appropriate for normal personal use. Accordingly, proprietors of export warehouses along the United States-Mexican border were required to present landing certificates to confirm that purchases of more than 5 cartons of cigarettes (1000 cigarettes) are presented or declared through Mexican customs.

Sec. 3. CHANGES IN PROCEDURE

In recognition of these changes and clarifications, ATF has concluded that it is no longer appropriate for official documentation of commercial exportations (more than 1000 cigarettes and 1000 cigars) to be made on sales slips. Such documentation of commercial transactions causes administrative difficulties for both ATF and Customs.

Accordingly, this procedure supersedes ATF Procedure 76-1 and discontinues the authority of export warehouse proprietors to officially document commercial exportations of tobacco products (more than 1000 cigarettes and 1000 cigars) on sales slips. Effective February 16, 1981, all of these commercial exportations must be properly documented on ATF Form 2150 as required by the regulations in 27 CFR 290.198, 290.199, and 290.205.

Within the newly prescribed limits for small exportations of tobacco products, this new ATF Procedure continues in effect essentially the same procedural requirements for documentation of individual small transactions by sales slips consolidated onto a single Form 2150. However, this new ATF Procedure provides alternative points for obtaining the purchaser's signature and recording license plate information on a sales slip.

All previous authorizations to operate under the procedures set out in Revenue Procedure 72-27 or Procedure 76-1 are hereby cancelled effective February 16, 1981. Any previously approved alternate procedures other than those specifically based on either Revenue Procedure 72-27 or ATF Procedure 76-1 will continue in effect to the extent they apply to noncommercial type transactions (i.e., the sale of not more than 1000 cigarettes or 1000 cigars) and have not otherwise been terminated. Export warehouse proprietors are authorized to use the sales slip form of documentation for personal-use quantities (not more than 1000 cigarettes and 1000 cigars) as set forth in this procedure. No specific approval from ATF is required as long as these procedures are followed exactly.

Sec. 4. ACCEPTABLE PROCEDURES.

.01 *Limitation of Procedures.* A daily summarized Form 2150 may be prepared for reporting removals of cigars or cigarettes for exportation by individuals entering Canada or Mexico with not more than 1000 cigarettes or not more than 1000 cigars in any calendar day. The procedures for exportation in 27 CFR 290.198, 290.199 and 290.205 shall be followed, with a separate Form 2150 for each exportation, when the quantities exported are more than 1000 cigarettes or more than 1000 cigars in a calendar day. Any sale to an individual involving more than 1000 cigarettes or 1000 cigars per day must be documented on an individual Form 2150. If more than one sale is made to an individual during a day, the total of the sales that day are considered to be a single transaction.

An export warehouse proprietor may use multiple sales slips or invoices for recording components of a total sale involving 1000 or more cigarettes or cigars. However, the records and Customs certification for ATF purposes must be documented on an individual Form 2150 showing the total number of cigarettes and cigars involved in the transaction.

For example, if an individual on a given day makes three separate purchases of 1000 cigarettes (5 cartons) each from an export warehouse, the export warehouse proprietor may record the first sale of 1000 cigarettes on a sales slip, and that sale may be reported on the daily summarized Form 2150. The second and third sales must be recorded (A) on two separate Forms 2150 showing removal of 1000 cigarettes each, or, alternatively, (B) the second and third sales may be reported on a single Form 2150 showing the removal of 2000 cigarettes. The U.S. Customs Service will require the report warehouse proprietor to present a landing certificate with any Form 2150 submitted under (A) or (B).

.02 *Preparation of Sales Slips.* The export warehouse proprietor shall prepare a separate sales slip (original and 3 copies) for each daily sale of tobacco products totaling not more than 1000 cigarettes or 1000 cigars. The minimum information that must be included on the sales slip is (1) a preprinted serial number, (2) the name and address of the purchaser, (3) the date of purchase, (4) a list of the products sold, (5) license plate identification of the vehicle in which the cigarettes and cigars are to be transported to Canada and Mexico, (6) signature of receipt by purchaser, (7) a space for certification of export by Customs, and (8) a conspicuous statement that the products are sold exempt from U.S. Federal tax for consumption outside the United States and that if such products are returned to the United States they must be declared to Customs and are then subject to duty or tax.

Item 5, the license plate indentification, must be completed in all instances except those where the purchaser will carry the tobacco products over the border by foot. Item 5 is to be completed by the proprietor at the time of delivery of the articles to the purchaser. Alternatively, the license plate of the vehicle in Item 5 may be recorded on the sales slip at the point where the order is given. When license plate identification is recorded on sales slips at the point where the order is taken, the proprietor is responsible for verifying, and if necessary, correcting the license plate information at the point where the tobacco products are delivered to the purchaser. The proprietor is also responsible for assuring with reasonable certainty (by examining passports, drivers licenses, border crossing cards, etc.) that the purchaser's name and address, and all other information on the sales slip, are correct and complete.

.03 *Distribution and Certification of Sales Slips.* At the time of sale, the export warehouse proprietor shall furnish the purchaser with two copies of the sales slip. In addition, he shall attach one copy of the sales slip to the shipment of the tobacco products. The remaining copy will be retained by the proprietor at the export warehouse until the signed copy is returned to him after delivery of the tobacco products. When the shipment is delivered to the purchaser at the border, the purchaser will sign both the copy he surrenders to obtain delivery of the articles and the copy that will be furnished to the Customs officer who supervises the exportation. Alternatively, the purchaser may at the point where the order is given, sign an original and one copy of the sales slip, but no other copies; take the signed original and signed copy to the border crossing point; give them both to an employee of the export warehouse at the time the products and a copy of the sales slip are delivered to the purchaser.

The export warehouse employee making delivery of the tobacco products will visually determine the transporting vehicle's license number and the State, Province or country issuing such license and will record (or verify if recorded at the point of sale) the information on the two signed copies of the sales slip. The customs officer will receive one of the signed copies, as noted above, and the proprietor will retain the other as part of his records.

.04 *Preparation and Disposition of Daily Summarized Form 2150.* At the close of each business day a consolidated Form 2150 will be prepared, in triplicate. The form shall be marked to show that it is a consolidated form, and it shall include all the information called for by the form except items 6, 7, 8, 9, and columns (b) and (e) of item 12. At item 11 there shall be entered the words "as shown on individual sales slips," and the serial numbers of such individual sales slips shall be entered in column (a) of item 12. All copies will be submitted to the Customs officer at the border for execution of the certificate of export. After certification, the Customs officer will retain a copy and return the original and remaining copy to the warehouse proprietor. The proprietor will retain as part of his records the copy of the consolidated Form 2150 and the receipted copies of the related sales slips. He will transmit the original of the consolidated Form 2150 to the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, no later than the close of the business day following the day the removals were made.

Sec. 5. ALTERNATE PROCEDURES.

The export warehouse proprietor may not use procedures other than those in 27 CFR Part 290 or as set forth in this ATF procedure unless they are approved by the Director, Bureau of Alcohol, Tobacco and Firearms, as provided in 27 CFR 290.72 relating to the authorizations for alternate methods or procedures. All previous authorizations for alternate methods or procedures under Revenue Procedure 72-27 and ATF Procedure 76-1 are terminated effective February 16, 1981.

Sec. 6. EFFECTS ON OTHER DOCUMENTS.

ATF Proc. 76-1, ATF C.B. 1976, 121, is hereby superseded effective February 16, 1981.

Sec. 7. INQUIRIES.

Inquiries concerning this ATF Procedure should refer to its number and be addressed to the office of the appropriate Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms.

27 CFR 290.205: TO CONTIGUOUS FOREIGN COUNTRY

Tax-exempt sales of tobacco products by tobacco export warehouses to persons crossing the United States border into Canada or Mexico. See ATF Proc. 80-5, page 33.

27 CFR 290.199: DISPOSITION

Tax-exempt sales of tobacco products from tobacco export warehouses to persons crossing the United States border into Canada or Mexico. See ATF Proc. 80-5, page 33.

Subpart C—FIREARMS

27 CFR 179.32: SPECIAL (OCCUPATIONAL) TAX RATES

Certification of special tax payment by federal firearms licensees. See ATF Proc. 80-6, below.

27 CFR 179.34: REGISTRATION, RETURN, AND PAYMENT OF SPECIAL (OCCUPATIONAL) TAXES

Certification of special tax payment by federal firearms licensees. See ATF Proc. 80-6, below.

27 CFR 179.36: THE SPECIAL TAX STAMP RECEIPT FOR SPECIAL (OCCUPATIONAL) TAXES

(Also 179.32, 179.34 and 179.88)

Certification of special tax payment by federal firearms licensees

ATF Proc. 80-6

Section 1. PURPOSE.

The purpose of this ATF procedure is to inform special (occupational) taxpayers of an ATF identification number which may be used in lieu of the IRS special tax stamp number on all National Firearms Act (NFA) transaction forms.

Sec. 2. BACKGROUND.

Section 5801, Title 26, U.S.C. provides that on first engaging in business, and thereafter on or before the first day of July of each year, every importer, manufacturer, and dealer in NFA firearms shall pay the appropriate special (occupational) tax. In addition, section 5802 requires each importer, manufacturer, and dealer to register in each internal revenue district in which such business is to be carried on.

The regulations at 27 CFR 179.34 provide that each person, prior to commencing any business taxable under section 5801 shall, for each place of business, register, file a return (Form 11), and pay the proper tax to the Director of Internal Revenue Service Center serving the internal revenue district in which the business is located. In addition, 27 CFR 179.36 provides that taxpayers complying with the requirements of section 179.34 will be issued a special tax stamp as evidence of payment of the special (occupational) tax.

A firearm registered to a special (occupational) taxpayer may be transferred by that person without payment of the transfer tax to any other special (occupational) taxpayer qualified to manufacture, import, or deal in that type of firearm. 27 CFR 179.88(a). The application for a tax exempt transfer must, among other things, identify the Federal firearms license and the special (occupational) tax stamp of the transferor and the transferee. 27 CFR 179.88(b). Identification of the tax stamp is necessary to ensure that the transferor and transferee are qualified to manufacture, import, or deal in that kind of firearm.

Sec. 3. ALTERNATE CERTIFICATION PROCEDURE.

It has come to the Bureau's attention that several months sometimes elapse between the time of the payment of the required tax and receipt of the required tax stamp. The delay in receipt of the tax stamp has resulted in the inability of special (occupational) taxpayers to comply with the above-noted regulation and has created a serious business inconvenience for them.

In order to facilitate transfers between special taxpayers the Bureau had adopted the following procedure. Upon submission by the special (occupational) taxpayer of ATF Form 7590.3 certifying to the payment of the required tax, the Bureau will issue to the taxpayer ATF Form 7590.2. This form will contain an ATF identification number which should be used in lieu of the IRS special tax stamp number on all NFA transaction forms submitted to ATF by special (occupational) taxpayers. This procedure will identify the class of the special taxpayer as specified in 27 CFR 179.32 and will satisfy the requirements of section 179.88(b).

Sec. 4. INQUIRIES.

Inquiries regarding this ATF procedure should refer to its number and be addressed to the Assistant Director (Technical and Scientific Services), Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW, Washington, DC 20226. Attn: Chief, National Firearms Act Branch.

27 CFR 179.88: SPECIAL (OCCUPATIONAL) TAXPAYERS

Certification of special tax payment by federal firearms licensees. See ATF Proc. 80-6, above.

Subpart D—EXPLOSIVES

27 CFR 181.54: APPROVAL OF MOBILE MAGAZINES

A procedure is prescribed for obtaining one-time approval of mobile explosives magazines.

ATF Proc. 80-7

Section 1. PURPOSE.

This procedure provides for relocating approved mobile explosives magazines without having to obtain additional, prior ATF approval.

Sec. 2. BACKGROUND.

.01 ATF has recognized the use of types 2, 3, 4, and 5 mobile explosives magazines in transporting explosives to job sites, and the frequent movement of these same magazines among explosives licensees, permittees and users.

.02 The Bureau has held in ATF Ruling 80-22, that approved and permanently marked mobile magazines do not have to be reapproved prior to each change in location.

.03 Explosives storage construction requirements appear in Subpart J of Part 181 of Title 27, Code of Federal Regulations. The instructions concerning approval and permanent markings are detailed in the following sections of this procedure.

Sec. 3. REQUIREMENTS FOR APPROVAL.

.01 Markings. Each mobile magazine must be permanently marked in a conspicuous manner on the interior, preferably on the inside of the door. The markings must state:

a. Name of the owner;

b. Address (City and State) of the owner;

c. Identification number: one selected by the owner and not duplicated either on or in any other magazine belonging to the owner.

.02 Application for Approval. The owner or possessor shall submit a letter requesting inspection and approval of the mobile magazine to the regional regulatory administrator of the ATF region in which the magazine is physically located. The letter must include:

a. All information to be contained in the markings, including the method to be used in marking;

b. A complete description of the mobile magazine, including:

(1) The identification number;

(2) The specific type (2, 3, 4, or 5);

(3) All construction specifications pertaining to the magazine. (See Subpart J of Part 181 of Title 27, CFR, for the required information.)

c. Directions to the magazine's physical location if the address is a post office box or a route number;

d. The owner's address and telephone number;

e. The possessor's address and telephone number (if different from that of the owner), including directions to the magazine's physical location if the address is a post office or a route number.

.03 Notice. ATF will, upon consideration of the application and/or inspection of the magazine, notify the applicant advising whether or not the particular magazine has been approved. If approved, the notice of approval must be conspicuously displayed within the magazine near the markings. If disapproved, the applicant will be advised of the reason for disapproval.

Sec. 4. CHANGES AFTER APPROVAL.

.01 General. ATF approval covers a mobile explosives magazine only as long as the magazine meets construction requirements, and matches the description furnished ATF as set out under Sec. 3.02. The possessor of any approved mobile magazine must notify the regional regulatory administrator of any change or alteration in the construction of a previously approved mobile magazine.

.02 Change in Ownership. The possessor shall notify the regional regulatory administrator of the region in which the magazine currently is approved of any change in the ownership of the magazine. This notification shall include both prior and new permanent markings as required by Sec. 3.01.

.03 Change in Construction. The possessor shall notify the regional regulatory administrator of the region in which the magazine currently is approved of any proposed additions or changes to the magazine. This notification shall include both prior and new information as required by Sec. 3.02. No addition or change shall be made without written approval from ATF.

Sec. 5. INQUIRIES.

Inquiries concerning this procedure should refer to it by number and be addressed to one of the ATF regional offices, as seen below:

REGIONS	**ADDRESSES**
CENTRAL REGION Indiana, Kentucky, Michigan, Ohio, West Virginia 800-582-1880 (OH only) 800-543-1932 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 550 Main Street Cincinnati, Ohio 45202
MID-ATLANTIC REGION Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia 800-462-0434 (PA only) 800-523-0677 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 2 Penn Center Plaza, Room 360 Philadelphia, Pennsylvania 19102
MIDWEST REGION Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin 800-572-3178 (IL only) 800-621-3211 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 230 S. Dearborn Street 15th Floor Chicago, Illinois 60604
NORTH-ATLANTIC REGION Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont 800-442-8275 (NY only) 800-223-2162 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 6 World Trade Center, 6th Floor New York, New York 10048
SOUTHEAST REGION Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee 800-282-8878 (GA only) 800-241-3701 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 3835 Northeast Expressway (Mail: P.O. Box 2994) Atlanta, Georgia 30301
SOUTHWEST REGION Arkansas, Colorado, Louisiana, New Mexico, Oklahoma, Texas, Wyoming 800-442-7251 (TX only) 800-527-9380 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 1114 Commerce Street, Room 701 Dallas, Texas 75242
WESTERN REGION Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington 800-792-9811 (CA only) 800-227-3072 (all others)	Regional Regulatory Administrator Bureau of Alcohol, Tobacco and Firearms 525 Market Street 34th Floor San Francisco, California 94105

Administrative Matters PART V

Subpart C—Treasury Department Orders and Delegation Orders

Delegation Order ATF O 1100.129

Authorities of the Director in 27 CFR Part 19 Relating to Alcohol Fuels

1. *Purpose.* This order delegates to the Assistant Director (Regulatory Enforcement) certain authorities now vested in the Director by regulations in 27 CFR Part 19.

2. *Background.* The Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96-223) was signed by President Carter on April 2, 1980. The new law amends the Internal Revenue Code of 1954 by adding a new Section 5181 relating to distilled spirits for fuel use. Temporary regulations have been published which give the Director certain new authorities.

3. *Delegation.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms by Treasury Department Order No. 221, dated June 6, 1972, and by 26 CFR 301.7701-9, the authority to take final action on the following matters is hereby delegated to the Assistant Director (Regulatory Enforcement):

(a) To waive any provision of 26 U.S.C. Chapter 51 or 27 CFR Part 19 (other than 26 U.S.C. 5181, Section 19.63a, Subpart Y of Part 19, or any provisions requiring the payment of tax), to the extent it is necessary to carry out the provisions of 26 U.S.C. 5181, under 27 CFR 19.63a.

(b) To approve other materials that may be used to render spirits unfit for beverage use, and require the proprietor to submit a sample of the proposed substitute material, under 27 CFR 19.993.

(c) To approve meters to determine the quantity of spirits by volume, under 19.980(a).

4. *Redelegation.* (a) The authority in paragraph 3a may be redelegated only to Bureau Headquarters personnel not lower than the position of branch chief.

(b) The authority in paragraph 3b may be redelegated only to Bureau. Headquarters personnel not lower than the position of ATF specialist.

(c) The authority in paragraph 3c may be redelegated to Bureau Headquarters personnel not lower than the position of branch chief, and to Regulatory Enforcement regional personnel now lower than the position of chief, technical services who may only approve requests that are identical to those previously approved by Bureau Headquarters personnel.

5. *For Information Contact.* Procedures Branch, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202) 566-7602.

6. *Effective Date.* This delegation order becomes effective on September 16, 1980.

7. *Approval.* September 8, 1980.

G. R. Dickerson,
(Director.)

(Filed by the Office of the Federal Register on September 15, 1980, 8:45 a.m., and published in the Federal Register for September 16, 1980, 45 F.R. 61421)

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Announcements

PART VI

Announcement 80-74

Major Disaster Areas Proclaimed By The President

The President has determined that certain areas of the United States were adversely affected by disasters of sufficient magnitude to warrant Federal assistance under the Disaster Relief Act of 1974. The specific areas adversely affected, as identified by the Administrator, Federal Emergency Management Agency (FEMA), are listed below.

Persons in the affected areas holding for sale alcoholic beverages, cigars, cigarettes, or cigarette papers or tubes, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of these disasters may be paid an amount equal to the internal revenue taxes and customs duties paid on such products, as provided in 26 U.S.C. 5064 and 5708. Claims for such payments should be filed with the Regional Regulatory Administrator, Bureau of Alcohol, Tobacco and Firearms, for the ATF region in which the alcoholic beverages, cigarettes, etc., were held for sale. Claims may be allowed only if filed within six months after the date the FEMA identifies the specific disaster area.

Date Disaster Areas Identified by FEMA	*Affected Areas*	*Type of Disaster*
September 26, 1980	TEXAS Precinct One of Nolan County	Rains and flooding resulting from Tropical Storm Danielle, beginning on or about September 5, 1980
November 27, 1980	CALIFORNIA Counties of: Los Angeles, Orange, San Bernadino	Fire and high winds beginning on or about November 15, 1980

Announcement 80-75

Statistical tabulation of firearms manufactured in the United States and firearms exported during the third quarter of Fiscal Year 1980

The following statistics represent the number of firearms manufactured in the United States during the Third Quarter (1 April through 30 June 1980) and the number of these firearms which were subsequently exported. These figures were compiled from Forms 4483-A submitted by federally licensed manufacturers of firearms.

The figures do not include firearms that were manufactured for use by the Armed Forces of the United States. Also, only these weapons that are "firearms" as that term is defined in Titles I and II of Public Law 90-618, the Gun Control Act of 1968, are included in the tabulation.

Type of firearm produced	*Total production*
Pistols	207,554
Revolvers	430,210
Rifles	395,777
Shotguns and Combination guns	268,198
Machineguns	12,793
Any Other Weapon	2

Type of firearm exported	*Quantity*
Pistols	8,700
Revolvers	57,281
Rifles	41,176
Shotguns and Combination Guns	29,909
Machineguns	305
Any Other Weapon	0

Announcement 80-76

Industry Circular 80-10 is withdrawn

Industry Circular 80-10, dated November 17, 1980, announced that a ruling would be published in this bulletin revoking Revenue Ruling 56-98, 1956-1 C.B. 811. Under the new ruling neutral spirits to which sugar or citric acid had been added could not be designated or labeled as vodka.

The Bureau has reconsidered its action and will not issue a new ruling on this matter. Instead, the Bureau will pursue the matter through the rulemaking process under the provisions of the Administrative Procedures Act.

Until the matter is resolved under the rulemaking process, vodka may continue to be made as authorized in Revenue Ruling 56-98. Industry Circular 80-10 is hereby withdrawn.

Announcement 80-77

Revocation of Permit

ATF has revoked the wholesaler's and importer's basic permits of Wellington-Clarke Ltd., Inc., Euclid, Ohio, in accordance with 27 U.S.C. 204(e) of the FAA Act. The permitee failed to engage in the operations authorized by the permit for a period of more than two years.

Announcement 80-78

Revocation of Permit

ATF has revolked the basic permit of Munising Supply Co., Munising, Michigan, in accordance with 27 U.S.C. 204(e) of the FAA Act. The permittee failed to engage in operations authorized by the permit for a period of more than two years.

Announcement 80-79

Recall of Alcoholic Product

Recently a quantity of Ski Country Bourbon Whiskey bottled by the David Sherman Corporation, DSP-MO-16, St. Louis, Missouri, was withdrawn from the market after ATF found it deficient in proof. Sherman bottled 790 cases of bourbon in distinctive liquor bottles depicting various birds and wildlife labeled as 80° proof. Subsequent analysis of the samples disclosed that the actual proof of the spirits ranged from 77.0° to 79.1°. Of the 790 cases bottled, 287 cases were voluntarily retained at the premises, 15 cases of the 503 shipped were returned to the plant, the remainder apparently sold to consumers.

Announcement 80-80

Offer in Compromise

United Vintners, Inc., d/b/a Italian Swiss Colony, Asti, California, was found in violation of 26 U.S.C. 5061 for failure to timely file its Distilled Spirits Tax Return. An offer of $2,800 was accepted in compromise of the penalties incurred.

Announcement 80-81

Offer in Compromise

ATF has accepted an offer in compromise of $5,000 from Bohemian Distributing Company, North Hollywood, California. The proponent failed to timely file its Distilled Spirits Tax Return in violation of 26 U.S.C. 5061.

Announcement 80-82

Offer in Compromise

ATF accepted an offer of $1,000 from Joseph Jerome Koebrick, San Diego, California, in compromise of tax assessed on transferring of firearms in violation of the National Firearms Act.

Announcement 80-83

Offer in Compromise

ATF has found Las Vegas Distributing Co., Las Vegas, Nevada, in violation of 27 U.S.C. 205(b)(3) and 205(b)(4) of the FAA Act. An inspection disclosed that the wholesaler/importer induced retailers by (1) furnishing equipment, (2) providing a discount using unlike merchandise, (3) selling wine and distilled spirits below laid-in cost to a retailer and (4) providing a retailer with advertising service. An offer of $1,000 was accepted in compromise of the civil and criminal liabilities incurred.

Announcement 80-84

Offer in Compromise

ATF has accepted an offer in compromise of $5,000 from McKesson Wine and Spirits Company, Little Rock, Arkansas. McKesson was found in violation of 27 U.S.C. 205(b)(3) of the FAA Act by furnishing money, thereby, inducing retailers to purchase its products to the exclusion of products sold or offered for sale by others in interstate commerce.

Announcement 80-85

Offer in Compromise

ATF has accepted an offer in compromise of $5,000 from the McCormick Distilling Company, Weston, Missouri. The proponent violated 26 U.S.C. 5201, 5205, 5207, 5301, and 5555 of the Internal Revenue Code, and 27 U.S.C. 205(e) of the FAA Act for failure to: (1) properly gauge spirits; (2) properly dispose of and destroy red strip stamps; (3) keep proper records; (4) obtain approval prior to bottling and distributing distilled spirits in distinctive miniature decanters; and (5) properly state proof on labels.

Announcement 80-86

Offer in Compromise

ATF has accepted an offer of $1,555.99 to compromise the civil liability incurred under 26 U.S.C. 5684 by Almaden Vineyards, Inc., San Jose, California. The proprietor failed to timely file Form 2050, Wine Tax Return, in violation of 26 U.S.C. 5061.

Announcement 80-87

Offer in Compromise

B & B Distributors, Inc., Spokane, Washington, was found in violation of 27 U.S.C. 205(b)(4) in connection with payments for advertising to two retailers. ATF accepted an offer of $1,000 in compromise of the civil and criminal liabilities imposed by 27 U.S.C. 204(e) and 207.

Announcement 80-88

Offer in Compromise

Watkins Distributors, Inc., Spokane, Washington, was found in violation of 27 U.S.C. 205(b)(4) of the FAA Act by being connected with payments for advertising with two retailers. ATF accepted an offer of $1,000 in compromise of the civil and criminal liabilities incurred.

Announcement 80-89

Offer in Compromise

Classic Wine Imports, Inc., Boston, Massachusetts, was found in violation of 27 U.S.C. 205(b)(3) and 205(d) of the FAA Act. The permittee (1) furnished unlawful inducements to retail purchasers of alcoholic beverages resulting in the exclusion of products sold by competitors; and (2) sold alcoholic beverages on consignment or under conditional sale or with the privilege of return. ATF accepted an offer of $1,500 in compromise of the civil and criminal liabilities incurred.

Announcement 80-90

Offer in Compromise

As a result of the Bureau's voluntary disclosure program, Schieffelin and Company, New York, New York, submitted an offer in compromise of a violation of the FAA Act. Schieffelin violated 27 U.S.C. 205(b)(3), 205(b)(4) and 205(c)(2) by: paying bonuses to a wholesaler; paying advertising costs for retailers; furnishing free goods as inducements to retailers; furnishing price discounts; conducting salesman incentive contests, and violating various other recordkeeping requirements as required by 26 U.S.C. 5114(a) and 5146(a). ATF has accepted an offer of $65,000 in compromise of the violation.

Announcement 80-91

Offer in Compromise

Inspections conducted at Consolidated Distilled Products, Inc., Chicago, Illinois, disclosed that Consolidated failed to maintain accurate records of taxable removals and failed to make payment of tax. An employee of the proponent used magnets and otherwise manipulated weights on scales used for tax-determinations to intentionally understate the amount of tax due. The inspections also disclosed that tax determined spirits were being taken from the proponent's bottling tanks for use in the production on non-beverage products which resulted in increased operational losses. ATF accepted an offer of $60,585.13 in compromise of the civil and criminal liabilities incurred. Of the $60,585.13 accepted, $40,585.13 was to compromise the tax liabilities incurred.

Announcement 80-92

Offer in Compromise

An inspection conducted at Publicker Chemical Corporation, San Pedro, California, revealed that the DSP proprietor violated 26 U.S.C. 5006, 5171, 5172, 5178, 5202, 5204, 5207, 5211, 5213, 5214, 5241, 5271, 5552, and 7805 of the Internal Revenue Code. The proprietor violated numerous recordkeeping, packaging, storing, labeling, gauging and formula requirements. ATF accepted an offer of $7,500 in compromise of the civil and criminal liabilities incurred.

Announcement 80-93

Offer in Compromise

ATF has accepted an offer of $3,000 in compromise from Personal Products Company, Wilmington, Illinois, for violations of 26 U.S.C. 5271, 5273, and 5275 of the Internal Revenue Code. The proponent (1) failed to report and receive approval of changes in SDA use; (2) failed to report changes in officer/directors within 30 days; (3) withdrew SDA that exceeded quantity authorized on form 1485; (4) failed to account for losses or deficiencies of SDA while in transit and shipment; (5) failed to account for losses while at business premises;

and (6) failed to chronologically file forms and keep timely and accurate daily records.

Announcement 80-94

Offer in Compromise

Mohawk Liqueur Corporation, Detroit, Michigan, violated the provisions of 26 U.S.C. 5001, 5008, 5201, 5204, 5206, 5207, 5214, and 5555 of the Internal Revenue Code. Mohawk failed to comply with the recordkeeping and procedural requirements by failing to maintain on its premises accurate records and controls of: receipts, samples, filter remnants, inventories, bottling losses, deposits and withdrawals from tanks, and removals from WLD premises. In addition, the proponent failed to properly conduct proof and fill checks and keep records; equip tanks for government locking; properly label cases; maintain accurate records of removals; report breakage of controlled stock; and complete inventory in a timely manner. ATF accepted an offer of $10,000 in compromise of the criminal liabilities imposed by 26 U.S.C. 5687.

Announcement 80-95

Offer in Compromise

ATF has accepted 2 offers in compromise totalling $1.2 million to settle marketing violations disclosed voluntarily by National Distillers and Chemical Corp., New York, New York. National violated 26 U.S.C. 5114 of the IRC and 27 U.S.C. 205(b)(3) and 205(c)(1) of the FAA Act by (1) failing to maintain accurate records of transactions and reports, and (2) making payments to and/or providing free goods to retailers or retail employees for the purpose of inducing said retailers to purchase its products to the exclusion, in whole or in part, of competing products. In addition, the proponent violated 26 U.S.C. 5121, 5124, 5141 and 5142 of the IRC by engaging in an activity known as "industrial sales." National failed to pay special occupational taxes as a retail liquor dealer and failed to maintain records of such transactions. ATF accepted $450,007.84 of the 1.2 million offer to compromise the tax liability incurred.

Announcement 80-96

Offer in Compromise

Watkins Distributors Inc., a wholesaler in wine and malt beverages, Spokane, Washington, violated 27 U.S.C. 205(b)(4) of the FAA Act by paying for and providing advertising services for two retail outlets. ATF accepted an offer of $1,000 in compromise of the civil and criminal liabilities incurred.

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Key to Abbreviations:

ATFP	ATF Procedure
ATFR	ATF Ruling
Ct.D.	Court Decision
DO	Delegation Order
PL	Public Law
TD	Treasury Decision

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  - False and misleading statements in labeling and advertising of malt beverages (ATFR 80-3) 1980-2, 13
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- Elimination and simplification of winery reporting (losses) (TD ATF-63) 1980-1, 1
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- Fill requirements for bottling of wine (ATFR 80-14) 1980-3, 19
- Ingredient disclosure on labels of alcohol products; TD ATF-66 not published in its entirety (Announcement 80-50) 1980-3, 45
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- Application to serve tax-free wine on bonded premises for special events (ATFR 80-19) 1980-4, 23
- Elimination and simplification of winery reporting (TD ATF-63) 1980-1, 1
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- Alternate methods for transferring beer from brewery cellars to packaging operations (ATFR 80-7) 1980-2, 18
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- Distilled spirits for fuel use (PL 96-223) 1980-2, 47
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- Alternate curtailment and extension of bonded premises for use as general premises (TD ATF-75) 1980-4, 19
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- Reduced maximum operations bond penal sums for DSP proprietors (TD ATF-69) 1980-2, 4
- Temporary regulations for the establishment and operation of DSP for producing alcohol fuels; TD ATF-71 not published (Announcement 80-51) 1980-3, 46
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- Alternate procedure for approval of distinctive liquor bottles as a part of label approval process (ATFR 80-4) 1980-2, 16

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- 27 CFR 9.22 added; Augusta viticultural area (TD ATF-72) 1980-3, 1
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- 27 CFR 19.190, 19.193 amended; 19.205 added (TD ATF-75) 1980-4, 19
- 27 CFR 19.927 and 250.112a added; Transition to the all-in-bond system (TD ATF 64) 1980-1, 10
- 27 CFR 19.245 amended; Bonds and penal sums of bond (TD ATF-69) 1980-2, 4
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- 27 CFR 211.111, 211.170, 212.11, 212.12 revised; 212.13, 212.80a added; 212.38, 212.110, 212.115, amended; New and revised formulas for CDA (TD ATF-67) 1980-2, 8
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